

**PRESIDENT OBAMA'S TRADE POLICY AGENDA
WITH U.S. TRADE REPRESENTATIVE RON
KIRK AND SECOND PANEL ON THE FUTURE OF
U.S. TRADE NEGOTIATIONS**

HEARING
BEFORE THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

FEBRUARY 29, 2012

Serial No. 112-22

Printed for the use of the Committee on Ways and Means



U.S. GOVERNMENT PRINTING OFFICE

78-589

WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
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KIRK AND SECOND PANEL ON THE FUTURE
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WEDNESDAY, FEBRUARY 29, 2012

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The Committee met, pursuant to notice, at 10:08 a.m., in room 1100, Longworth House Office Building, the Honorable Dave Camp (Chairman of the Committee) presiding.
[The advisory of the hearing follows:]

HEARING ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

Chairman Camp Announces Hearing on President's Obama's Trade Policy Agenda with U.S. Trade Representative Ron Kirk and Second Panel on the Future of U.S. Trade Negotiations

Wednesday, February 29, 2012

House Ways and Means Committee Chairman Dave Camp (R-MI) today announced that the Committee on Ways and Means will hold a hearing on President Barack Obama's trade policy agenda with U.S. Trade Representative Ron Kirk and with a second panel of witnesses on the future of U.S. trade negotiations. **The hearing will take place on Wednesday, February 29, 2012, in 1100 Longworth House Office Building, beginning at 10:00 a.m.**

In view of the limited time available to hear the witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing. A list of invited witnesses will follow.

BACKGROUND:

International trade is an engine for growth and job creation in the United States. While the United States is the largest economy and trading nation in the world, 95 percent of the world's consumers are abroad. The future success of American workers, businesses, and farmers is therefore integrally tied with continuing America's strong commitment to finding new markets and expanding existing ones for U.S. goods and services.

The bipartisan passage of the implementing bills for the Colombia, Panama, and South Korea free trade agreements in October 2011 marked an important step forward for U.S. trade policy. This hearing will provide an opportunity to explore with Ambassador Kirk how the President's trade agenda will sustain this momentum with respect to current trade issues, such as: progress in the Trans-Pacific Partnership negotiations; Russia's accession to the World Trade Organization; China's trade restrictive practices and non-tariff barriers that prevent U.S. companies from competing on a level playing field; the President's trade agency reorganization proposal and National Export Initiative (NEI); and various bilateral and multilateral trade disputes and concerns. In addition, Ambassador Kirk's testimony and the second panel of witnesses will provide an opportunity to focus on long-term thinking relating to future trade negotiations, including "post-Doha" WTO issues such as an international services agreement, Information Technology Agreement (ITA) expansion, and a trade facilitation agreement in the age of global supply chains; Bilateral Investment Treaties (BITs) with China and India and new BITs and investment opportunities; and the trade and investment relationship with the European Union, India, and Latin America.

In announcing this hearing, Chairman Camp said, **"Opening new markets for U.S. businesses, workers, and farmers and strong enforcement of U.S. rights are essential to driving economic growth and job creation here in the United States. The three free trade agreements with Colombia, Panama, and South Korea that Congress passed last year in a bipartisan manner sent a strong message that the United States has returned to the trade negotiating table. We are now at an important juncture to move forward aggressively on the Trans-Pacific Partnership negotiations and other initiatives to make sure that last year's momentum is not lost. It's also a critical time for us to look ahead for future trade and investment opportunities with important trading partners like the European Union, India, and**

Latin America to maximize American competitiveness and ensure that we do not fall behind.”

FOCUS OF THE HEARING:

The first panel of the hearing will provide an opportunity to explore with Ambassador Kirk current trade issues such as: (1) ensuring prompt implementation of the three free trade agreements with Colombia, Panama, and South Korea; (2) seeking to conclude a good Trans-Pacific Partnership agreement this year; (3) considering Russia’s WTO accession; (4) improving our important trade relationship with China and addressing China’s trade barriers; (5) addressing the Obama Administration’s trade agency reorganization proposal and National Export Initiative (NEI); and (6) ensuring appropriate trade enforcement efforts. The first and second panels will also focus on areas of potential future trade negotiations such as: (1) advancing WTO negotiations, including “post-Doha” issues at the WTO such as an international services agreement, Information Technology Agreement (ITA) expansion and a trade facilitation agreement; (2) completing Bilateral Investment Treaties (BITs) with China and India and exploring new BITs and investment opportunities; (3) deepening and expanding the trade and investment relationship with the European Union; and (4) establishing long-term, closer ties with important trading partners such as Latin America and India.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select “Hearings.” Select the hearing for which you would like to submit, and click on the link entitled, “Click here to provide a submission for the record.” Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Wednesday, March 15, 2012**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225-1721 or (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word format and **MUST NOT** exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including avail-

ability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://www.waysandmeans.house.gov/>.

Chairman CAMP. If everyone would take their seats, we are ready to begin. Well, good morning. I want to welcome everyone and extend a special welcome to our guest, the U.S. Trade Representative, Ambassador Ron Kirk, as well as our second panel of witnesses. I am looking forward to a discussion of the administration's trade policy agenda and the future of U.S. trade policy.

We are coming off a strong year in which we saw more action on trade than the past 5 years. We secured bipartisan passage of our trade agreements with Colombia, Panama, and South Korea, which had languished for far too long. This achievement signified that Congress and the White House, House, and Senate, Republicans, and Democrats could come together to pursue pro-growth, pro-job policies.

Our trading partners around the world have taken notice that we are back at the negotiating table and ready to lead. And there is further good news: the United States and South Korea quickly took the necessary steps to allow for entry into force of the U.S.-South Korea agreement, which will take effect in 2 weeks. Discussions paving the way for the Colombia and Panama agreements are also underway, and I encourage an expeditious completion.

Our recent trade successes have created a momentum—is somebody's phone ringing here? Hopefully they will hang up soon.

Our recent trade successes have created a momentum that we must continue. Hesitation and delay allow our competitors to take our market share and our jobs. As such, I would like to flesh out today how this Administration and this Congress can best promote economic growth and job creation through trade.

The one trade agreement negotiation away is the Trans-Pacific Partnership, which President Obama announced he would like to complete this year. This agreement will allow U.S. goods and services to more easily reach consumers across the Asia-Pacific region. And the TPP also serves as an effective counterbalance to China in its own backyard. I welcome interest by Japan, Canada, and Mexico as long as they will take on what is already negotiated without delay and build confidence that they can and will address outstanding bilateral issues.

We also faced Russia's WTO accession. Clearly, our ongoing relationship with Russia is a complex one, but I note that if we grant Russia Permanent, Normal Trade Relations will we be able to obtain the benefits of the concessions Russia made to join the WTO. We would give up nothing, not a single U.S. tariff, but we would obtain a new enforcement tool and bring our two countries closer on multiple fronts. This is a matter the Committee will have to carefully consider, and I look to the administration to build confidence and provide leadership on the economic issues to help explain why America should move ahead.

One of the largest trade issues that remains is China. With a population of over 1.4 billion people, the Chinese market provides tremendous opportunities to sell more U.S. goods and services,

which means more jobs here at home. Despite this potential, there are far too many problems with China that continue to put our workers and our businesses at a disadvantage from indigenous innovation policies to subsidies to intellectual property theft to currency undervaluation just to mention a few. We must push China on every front, and the Administration must ensure that China's commitments are fully implemented.

This committee has asked the Administration several times to define clear, concrete metrics to verify success. Tomorrow, Committee Members will be meeting on a bipartisan basis with Secretary Geithner, Secretary Bryson, and U.S. Trade Representative Ron Kirk to discuss the challenges and opportunities presented by our China relationship.

In addition, Ranking Member Levin, Chairman Brady, Ranking Member McDermott, and I are introducing targeted legislation today to make sure that we have the tools we need to address unfair Chinese subsidies through our countervailing duty law in a WTO consistent manner, and we expect to move this legislation shortly.

I spent time talking about the issues on our plate right now, but what about what comes next? An important aspect of this forward thinking is renewing Trade Promotion Authority, and I hope that Ambassador Kirk will share the administration's views on that topic. Because the WTO Doha negotiations are dormant, we should focus on a "post-Doha" strategy with those countries that share our views and ambition.

Given that 80 percent of U.S. employment is in services, an international services agreement holds great promise to enhanced market access abroad, and I support the administration's current discussions. Similarly, expanding our very successful Information Technology Agreement would provide us with more tariff-free access to foreign markets for our information technology products. A trade facilitation agreement could significantly reduce the cost of doing business in the age of global supply chains.

Expanded investment opportunities are also vital to U.S. growth. For the last 3 years, the Obama Administration has placed all bilateral investment treaties on hold. Moving forward on BITs already begun with China and India and launching new negotiations should be a top priority. And finally, we have to think defensively about our strategy when other countries conclude subpar agreements that don't meet WTO standards.

So in conclusion, today, I would like to have a comprehensive discussion about the present and future of U.S. trade policy and what it means for job creation here in the United States. And I will now yield to Ranking Member Levin for the purpose of an opening statement.

Mr. LEVIN. Thank you, Mr. Chairman. We very much welcome this hearing.

And Mr. Ambassador, we very warmly welcome you here today.

Democrats on this committee have been actively working to shape a new trade policy responsive to the changing dynamics of a global economy. We rejected the passive, hands-off approach that earlier characterized American trade policy and embraced actively shaping the expansion of trade in ways that grappled with the im-

pect of trade and broadened its benefits and minimized its downsides.

These principles have been reflected in our work on this Committee for several decades now. They drove our work to ensure incorporating enforceable core labor standards and environmental standards in trade agreements. Working with the Clinton Administration to adopt workers standards in the pioneering Cambodia bilateral clothing agreement and in the Jordan FTA; opposing CAFTA because of the Bush administrations rejection of that standard; and when in the majority, developing the May 10th, 2007 agreement, incorporating the five basic labor and significant environmental standards into the Peru agreement.

Those principles guided our refusal to approve the FTAs negotiated by the Bush administration with Korea, Panama, and Colombia until significant shortcomings were addressed; working with you, Ambassador Kirk, and others in the administration. Together we helped importantly improve those agreements ending the one-way street of Korea's historically closed auto market, ensuring that U.S. taxpayers could not use Panama as a tax haven, developing an action plan to improve labor conditions and address violence against workers in Colombia.

We are beginning to see tangible results from these efforts. Ford has already begun shipping cars to South Korea from the United States of America, and work continues with Colombia to ensure full, meaningful implementation of the action plan related to labor rights. Today's hearing will focus in part on potential new agreements to open new markets for U.S. goods and services, the Trans-Pacific Partnership, Russia's WTO accession, the possibility of a U.S. EU FTA, and the promise of a WTO services "plurilateral".

As important as these new opportunities are, they cannot be our sole focus. A defining trade issue continues to be our imbalanced trade relationship with China. Unfortunately, the Bush administration too often adopted a hands-off approach to this imbalance. It failed to actively implement the special provision provided for in China's WTO accession for an annual review of whether China was meeting its obligations. The Bush administration refused in all four cases presented to it to use the 421 safeguard against surges in Chinese imports that harm U.S. industries and workers.

And Mr. Ambassador, this administration took a different track and used 421.

Our trade with China effects myriad industries in their efforts to compete within this market in China and globally, and it is fundamentally affecting the structure and composition of our economy. A trade policy that ignores or fails to actively address this reality is incomplete and ultimately will prove ineffective. So I applaud the President's decision to create a new Interagency Trade Enforcement Center to enhance the administration's ability to aggressively challenge unfair trade practices in China and elsewhere.

I urge the administration to ensure that the ITC is designed and equipped to fundamentally alter the way trade cases are developed and prosecuted, and I think, Mr. Ambassador, you will be talking about that. I also urge the ITC to focus immediately on China's duties on auto exports, its practices in rare Earth restraints, its ex-

port credit program, its forced technology transfer, and its lack of transparency and use of intimidation as a trade policy tool.

The need to actively shape the contents of trade agreements, and not to assume simply that more is always better, applies to the important TPP talks. We must closely evaluate, number one, the challenges presented by unfair competition from state-owned enterprises, the unique circumstances presented by a communist non-market economy like Vietnam, and the opportunities and challenges presented by prospective new entrances, especially Japan, whether with its longstanding rigid, exclusionary structures; it presents real new market access opportunities for U.S. companies and workers and creates a new benefit for our economy, including our manufacturers.

And finally, with respect to Russia and the WTO, there is a need to approach key outstanding issues in an active rather than passive way ranging from IPR enforcement to the rule of law.

So I look forward to hearing from you, Ambassador, and the other panelists on how we can continue to craft a trade policy that will meet the challenges of today and anticipate those of tomorrow.

Chairman CAMP. Well, thank you. And Ambassador Kirk, again, welcome, and I just want to congratulate you and your team at USTR for everything you do, and I just want you to know that I will do everything I can to make sure that you USTR continues to maximize its effectiveness by remaining a separate agency instead of being swallowed up within a larger bureaucracy. And while I want to shrink government, I don't want to do that at the expense of efficiency and excellence. So thank you for being here, Ambassador. We do have your written statement, but you are recognized for 5 minutes.

STATEMENT OF AMBASSADOR RON KIRK, UNITED STATES TRADE REPRESENTATIVE

Ambassador KIRK. Thank you, Mr. Chairman and Ranking Member Levin. To the Members of the Committee, it is an honor to be with you again.

It was about 12 months ago that I had an opportunity to discuss our Administration's plan to work through outstanding issues related to the impending trade agreements with Korea, Colombia, and Panama, and we expressed our commitment to renewing Critical Trade Adjustment Assistance for America's workers, and extending trade preference programs. At the time, frankly, some of you thought we were seeking too much and taking far too long, but, notwithstanding, working together, we accomplished all of this and more last year.

Together, we did the hard work necessary to pass all of these important measures in one historic evening, and in the process, I would like to believe we built the new template for bipartisan support of trade that opens markets and levels the playing field for American business, workers, farmers, ranchers, manufacturers, and service providers.

This year, with your help, we are looking to forge ahead on another ambitious trade agenda. Tomorrow, you will receive formally our 2011 annual report as well as a comprehensive outline of our trade agenda for 2012, and in the interest of time, I would like to

not speak to those in detail, but highlight some of our key initiatives for the coming year.

First, I am proud to report that after the successful passage of these three trade agreements, we have been working on implementation of them, and we have finalized our plans with Korea, and that agreement will be entering into force on March the 15th. At the same time, we continue to pursue our due diligence with Colombia and Panama to ensure that they fulfill their commitments so that those agreements can take effect as soon as possible.

We are also moving full speed ahead in the Trans-Pacific Partnership negotiations building on the broad outlines announced last November at our APEC meeting with the leaders. We are seeking to conclude this agreement this year and address crosscutting issues, such as negotiating and promulgating regulatory coherence among the countries, enhancing the participation of small business, of trade throughout the Asia-Pacific, and building regional supply chains that will promote and sustain U.S. job growth.

As we consider the ambitions of additional countries, we will closely coordinate with this Committee as well as other Members of Congress to ensure that these participants meet the TPP's high standards and address those specific issues of concern many of you have raised.

As we move forward toward negotiating outcomes, the Obama Administration will also engage you thoughtfully on additional trade promotion authority as necessary to approve the TPP as well as future trade agreements. This year, we are getting even tougher on trade enforcement, which has been a priority of the Obama Administration from day one. Yesterday, President Obama established by Executive Order the Interagency Trade Enforcement Center to prioritize and more aggressively challenge the kinds of unfair trade practices that we fight fiercely every day, from China's improper restrictions on industrial raw materials to improper subsidies by the European Union and other partners.

Right now, we also have an opportunity to defend the rights of U.S. workers and businesses by working to pass the legislation referenced by Chairman Camp that will ensure our ability to remedy the harmful effects of unfairly subsidized imports from China and other countries. And we are ready to bring Russia into the rules-based system in a way that gives us more enforcement tools to enable enhanced market access and a level playing field for U.S. exporters. And that is why the administration will seek to terminate Russia's Jackson-Vanik status to ensure that American firms enjoy the same job-supporting benefits of Russia's WTO Membership as our international competitors.

Broadly speaking, our pursuit of enhanced trade to support American jobs extends across all geographic regions in all economic sectors. For example, we are engaging with the European Union to deepen our Trans-Atlantic trade relationship, and we are eager to work with you to make immediate progress with Sub-Saharan Africa and our CAFTA countries on issues like third-country fabric and textile and apparel rules of origin.

At the WTO, we will continue to pursue fresh, credible approaches to multilateral market opening trade negotiations in the

Doha realm, but also in other plurilateral options such as services and information technology.

In conclusion, I would like to thank the Committee for your thoughtful consideration of critical trade issues and continued support for our ambitious agenda. Working together, I have no doubt that we can stay on track to meet our goal of doubling U.S. exports and ensure that our trade policy continues to create job-supporting export opportunities for all Americans. Thank you.

[The prepared statement of Ambassador Kirk follows:]

**Testimony of Ambassador Ron Kirk
United States Trade Representative**

February 29, 2012
House Ways and Means Committee Hearing
1100 Longworth House Office Building
Washington, D.C.

Chairman Camp, Ranking Member Levin, members of the Committee, thank you for the opportunity to testify.

Around this time a year ago, I shared with you the Obama Administration's ambitious plan to open new markets for U.S. exporters and level the playing field for American farmers, ranchers, businesses, and workers. Working together over the past year, we showed what we can do to help our companies grow and put Americans back to work. We resolved the outstanding issues and passed three improved trade agreements with Korea, Colombia and Panama with strong bipartisan support. We extended the Generalized System of Preferences (GSP) and the Andean Trade Preference Act (ATPA). And to support workers transitioning to new jobs, we renewed a streamlined Trade Adjustment Assistance (TAA) program. Thanks to our combined efforts, today U.S. trade policy is increasingly responsive to the concerns of more Americans, and the playing field is more level for our businesses, workers, farmers and families who depend on the well-paying jobs that U.S. exports support.

This year, we can build on the momentum created by our bipartisan efforts and forge ahead with another ambitious trade agenda in 2012.

In his State of the Union address, President Obama laid out a blueprint for an economy that's built to last. It's built on the notion that if American businesses do what they can to bring jobs back to the United States, we will do everything we can to help them compete and succeed. The dedicated team of trade and legal experts at the Office of the United States Trade Representative (USTR) is front and center in that mission. Our efforts are helping to keep us on pace to meet the President's National Export Initiative goal of doubling exports by the end of 2014. We are opening new markets for U.S. exports, and we are ensuring U.S. companies and workers aren't at a disadvantage with their foreign counterparts as we continue to strengthen the rules-based trading system.

Today, I can proudly report to the Committee and Congress that the trade agreements we passed together are well on their way toward being implemented and entering into force. Right now, final plans are being made between the U.S. government and the government of Korea to bring the U.S.-Korea trade agreement into force on March 15. Similarly, we are continuing close coordination and consultation with the governments of Colombia and Panama to ensure they fulfill their commitments to bring those trade agreements into force as soon as possible.

Strong trade enforcement continues to be a top priority for the Administration. Consequently, we are currently seeking legislation from Congress necessary to ensure companies and workers continue to benefit from our efforts. As you know, we believe the U.S. Court of Appeals for the Federal Circuit wrongly decided the case of *GPX International Tire Corp. v. United States* (GPX

case), wherein the Court held that the Department of Commerce (Commerce) lacks the legal authority to impose countervailing duties (CVDs) on subsidized imports from countries with non-market economies, such as China and Vietnam. This flawed decision jeopardizes the ability of the United States to remedy the harmful effects of unfairly subsidized imports, and would impair Commerce's ability to ensure that our nation's manufacturers and workers have the opportunity to compete on a level playing field with our trading partners. Notwithstanding the strength of our legal position, prompt legislative action would clarify the law and avoid harm from injurious, subsidized goods. I appreciate the Committee's attention to this matter and look forward to securing passage of legislation that remedies the court's flawed ruling as soon as possible.

As Russia is set to join the World Trade Organization this year, the Administration is seeking legislation from Congress to ensure that American firms and American exporters enjoy the same job-supporting benefits of Russia's membership in the WTO rules-based system as our international competitors. Specifically, we must work together to terminate application of the Jackson-Vanik Amendment and authorize the President to extend permanent normal trade relations status to Russia as soon as possible. Bringing Russia, the largest market currently outside the WTO, into the rules-based global trading system will provide the United States with more enforcement tools to secure enhanced market access for both U.S. goods and services and a level playing field for U.S. exporters and service providers in Russia. We are committed to working with Congress to ensure that Russia has the responsibilities as well as the rights of a true trade partner.

As we continue to strengthen the rules-based trading system and hold our trading partners accountable for their obligations, we are also thinking creatively about how to enhance our trade enforcement capabilities. That is why yesterday President Obama signed an Executive order to support a new trade enforcement unit—the Interagency Trade Enforcement Center (ITEC), which will significantly enhance the administration's capabilities to prioritize and aggressively challenge unfair trade practices around the world, including those in China. The ITEC will represent a more aggressive "whole-of-government" approach to addressing unfair trade practices. Congress' support for this initiative will enable the Administration to investigate and pursue enforcement cases critical to the needs of U.S. business and workers throughout the country.

We are committed to ensuring that our trading partners adhere to WTO rules as well as trade agreement obligations through negotiation when possible and litigation where appropriate. For example, the Obama Administration is defending U.S. manufacturers' right to a level playing field as we seek a solution with the EU that will remove improper subsidies from the global aerospace market, and as we press China to move promptly to remove their improper export restrictions on key industrial raw materials. And we continue to seek market access in China for suppliers of electronic payment services as China effectively blocks U.S. and other foreign suppliers from participating in China's large and growing market for card-based transactions.

We must also address what seems to be the Chinese government's reflexive resort to trade actions in response to legitimate actions taken by the United States or other trading partners under their trade remedies laws. This type of conduct is at odds with fundamental principles of

the WTO's rules-based system and we will vigorously protect our rights. The Administration is currently challenging China's apparent improper imposition of duties on American broiler chicken products as well as China's anti-dumping and countervailing duties on hundreds of millions of dollars worth of American steel exports to China. In addition to pursuing these cases vigorously in 2012, the Obama Administration will bring additional cases – regarding practices of China and other WTO trading partners – as appropriate to enforce WTO commitments.

Given the importance of our growing trade relationship with China, the United States will use all available tools in 2012 to ensure that China engages in fair play on trade and that U.S. exporters have a fair shot to compete in China. In addition to enforcement efforts that aim to end discriminatory policies and unfair subsidies, we will also continue to press China – through the Strategic & Economic Dialogue, the Joint Commission on Commerce and Trade, and other ongoing engagement – to open investment opportunities, to complete negotiations to join the WTO Government Procurement Agreement by offering comprehensive coverage of its procurement, and to increase transparency and eliminate market access barriers and distortions in areas ranging from agricultural goods to services.

This year, the Administration will also seek China's complete implementation of its commitments to strengthen IPR protection and enforcement, including eliminating the use of illegal software by Chinese government entities. Likewise, focus will remain on ensuring an end to discriminatory "indigenous innovation" policies, as the Administration continues its efforts to protect the value of U.S. intellectual property and technology in China and support IP-related American jobs here at home. This month's agreement between China and the United States to significantly increase market access for imported movies is a positive development in this regard, as was China's action last year to remove local content requirements for wind energy equipment in China.

The Trans-Pacific Partnership (TPP) is a top priority for the Administration this year. Through the TPP, the Obama Administration is advancing the United States' multifaceted trade and investment interests in the dynamic Asia-Pacific region, where experts estimate that economies will grow faster than the world average through 2016. Building on the broad outlines announced last November in Honolulu, in 2012 the United States will seek to conclude a landmark, high standard TPP agreement with like-minded partners including Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. The agreement will address new cross-cutting issues such as promoting regulatory coherence among the countries, including with respect to sanitary and phytosanitary measures, enhancing the participation of small businesses in Asia-Pacific trade, and building regional supply chains that promote U.S. jobs. We will also decide with TPP partners on the entry of additional countries that have expressed interest in joining the negotiations, including Canada, Japan, and Mexico. In ongoing bilateral consultations with these potential partners, the United States continues to make clear that any new participants must be able to meet the high standards agreed by all TPP negotiating partners and be prepared to address specific issues of concern. Of course, we have and will continue to consult closely with Congress on the TPP. As we move toward negotiating outcomes and new partners, the Obama Administration will explore issues regarding additional trade promotion authority necessary to approve the TPP and future trade agreements.

The Administration is exploring with our trading partners creative approaches to fostering increased regional trade and investment integration worldwide, not only through the Trans-Pacific Partnership and across the Asia-Pacific, but also with the European Union and in response to historic transitions and changing conditions in areas such as the Middle East and North Africa (MENA).

We are engaging with the EU through a High-Level Working Group on Jobs and Growth to deepen and enhance our strong transatlantic trade and investment relationship, which already sustains several millions of jobs in the United States, and has the potential to sustain more. We are working with the EU to identify new opportunities to enhance international competitiveness and job creation in both of our markets.

We are working with regional partners in a Trade and Investment Partnership Initiative in the Middle East and North Africa. This effort will include a broad set of initiatives, including agreements, where appropriate, designed to increase job-supporting trade and investment between the United States and the region, as well as within the region. This initiative will build on specific steps taken in 2011 and early 2012 with a number of partners to boost trade, expand investment and support small and medium-sized enterprises.

We are also seeking to make additional progress with countries in sub-Saharan Africa and the Western Hemisphere. I have spoken with members of Committee about our plans in these areas, and the Administration is eager to work with Congress right away to pass legislation that extends the third-country fabric provision of the African Growth and Opportunity Act (AGOA) to 2015 and identifies South Sudan as a listed sub-Saharan African country, as well as legislation to make technical corrections to the textile and apparel rules of origin in the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR). At the same time, we intend to work with Congress and AGOA partners toward defining and achieving a seamless renewal of AGOA beyond 2015. And while we move quickly to implement new agreements with Colombia and Panama, we are also working with partners throughout the Western Hemisphere to enlarge the benefits of our existing agreements by exploring new areas to promote enhanced trade, such as regulatory cooperation.

Our pursuit of enhanced trade to support American jobs extends across all geographic regions and all major economic sectors as well. That is why we are successfully pursuing measures to enhance market access for America's manufacturers, farmers, ranchers, and service providers around the world. For example, when we put our free trade agreements with Korea into effect in mid-March there will be important new export opportunities to that country for the American automobile industry, which has accounted for 23.2 percent of the increase in manufacturing production since the U.S. economic recovery began. We recently concluded an important arrangement with the EU that will benefit American farmers and ranchers, create more opportunities for small businesses, and result in good jobs for Americans who package, ship, and market organic products. And we will continue to press trading partners to remove restrictions on market access for U.S. beef exports.

At the WTO, we continue to look for fresh, credible approaches to market-opening trade negotiations. We remain open to pursuing progress under the framework of the Doha Round

where there are reasonable prospects for producing significant results. And we will work with other members to ensure that the vital, ongoing work of the WTO's various committees remains vigorous and relevant to the world we live in. At the same time, we are ready to consider other options where more progressive WTO members have expressed interest, such as services.

All of these initiatives help contribute to the goal the President set two years ago of doubling U.S. exports over five years. Thanks to our bipartisan efforts, we remain on track to meet that goal: in 2011, overall U.S. goods and services exports exceeded \$2.1 trillion, which represents a 33.5 percent increase over 2009. Export gains continued across all major sectors in 2011: services exports were up 19.7 percent over 2009; manufacturing exports were up 33.4 percent; and agricultural exports were up 38.6 percent.

Working together, we can ensure our trade policy continues to help create the jobs Americans want and provides for new opportunities for our workers, businesses, farmers, and ranchers. I look forward to our discussion today. Thank you.

Chairman CAMP. Well, thank you very much, Ambassador Kirk. Our number one focus in Congress is jobs. And our push for better protection of U.S. intellectual property rights in China is all about jobs. Now, the International Trade Commission, an independent agency, recently did an analysis, and they determined that if China improved its IPR protection on the same level as we have in the

United States, it concluded that U.S. exports to China would increase by \$21.4 billion and that sales by U.S. companies in China would increase by \$87.8 billion and that more than two million jobs would be created in the United States.

What is your Administration doing to create these jobs? And are there any additional tools you need to be effective in this area?

Ambassador KIRK. Well, we are aggressively pursuing a very broad strategy to challenge, we think, some of China's restrictive and discriminatory policies not only in the area of information technology, but the underlying industrial policies. We use all the tools available to us such as challenging some of these policies directly in the WTO which resulted in the win on the issue of entering our films into Chinese markets and getting adequate compensation and protection for U.S. intellectual property.

We use all of our bilateral engagements to raise these issues from President Obama's frequent meetings with President Hu and Premier Wen to the recent visit of Vice President Xi, and the Strategic and Economic Dialog and the JCCT. But the bottom line, Mr. Chairman, is China presents a unique opportunity because of their explosive growth, but we all know of the frustrations that many of our businesses face because China has not fairly enforced the rules and recognized international standards in terms of respect for intellectual property and others.

But we will continue to engage them to get them to recognize and respect the rule of law, enforce intellectual property rights, and particularly combat piracy and counterfeited goods that resulted in the type of numbers that you referenced.

Chairman CAMP. Are there any additional tools you need to be more effective in this area?

Ambassador KIRK. We believe—we think right now that we have a sufficient number of tools. But I will be honest; part of the President's rationale for bringing together all of our agencies through this Interagency Trade Enforcement Center is to make sure that we are adequately and efficiently using the resources that we have.

As you know—or maybe the Committee does not know—our Administration has brought cases against China at twice the rate of the previous Administration. But more critically, at least right now, we have won every case we have brought against China. But we have had to be fairly selective in doing that, because in many cases, these are horribly resource intensive. It takes an extraordinary amount of work and time to gather the intelligence because of the non-transparency of China's system. So we do think the creation of this Trade Enforcement Center will go a long way in making sure that we aren't resource constrained and we are operating as efficiently and thoughtfully as we can.

Chairman CAMP. Well, and I know you know the stakes are enormous and the jobs that would be created in the United States, if we're able to simply bring them to the same standard on intellectual property we have, is significant. Two million jobs is important.

I wanted to shift to another area. Japan is interested in joining the TPP or Trans-Pacific Partnership, and I also understand Canada and Mexico are as well. Particularly with Japan, it shows how TPP can further integrate the Asia-Pacific region. If Japan adopts the high standards of the TPP, there are obviously potentially

many benefits to many sectors of the economy as well as many industries. But I know there are a number of significant outstanding issues that will need to be addressed, and I have heard from a number of industries about Japan's persistent barriers such as in autos, agriculture, and services, including issues about Japan Post.

Now, in my opinion, Japan's interest in joining creates a unique opportunity to address some of these barriers to U.S. exports and investment, and that is an opportunity we have not had. But what steps is the Administration taking to address the outstanding concerns about Japan's discriminatory policies and to ensure that Japan is ready to meet the TPP's high standards?

Ambassador KIRK. Well, that is—Mr. Chairman, you framed both the question and I think part of the response in exactly the same manner. I guess the attractive part of this equation was your statement “if Japan meets all of the high standards.” And we would say that for any of our partners in APEC, that what we have said is TPP is not something you are invited to. It is something other countries have to ascribe to.

And—we want high standards, because the future of our economic growth is going to be based on our ability, as the President says, to out-innovate, out-educate, out-sell the rest of the world. We have a very innovative manufacturing model now, and we aren't going to compromise that by entering trade agreements that allow countries to undercut that. But for all the reasons you articulated, we very much welcome Japan's expression of interest in joining us.

But I would say one of the strengths of our form of government is our transparency. And as you know, we welcome Japan's entry. We immediately began to proceed under the manner that Congress dictates to think about bringing in new countries, and we put a notice in the Federal Register inviting comments not only on Japan, but Mexico and Canada. And the upshot of that is Japan knows exactly, because all of these comments are public, what the concerns of our industries are.

And so we are now engaging with them, frankly, in a very honest dialog based on feedback we have gotten from your Committees and industries on how we would address that. We have made it plain we welcome Japan's entry in the TPP. As you know, part of our deliberation as an Administration as to whether we would join was based on our belief that, one, it was in our competitive advantage to be in on the ground floor drafting what we believe will be the standard portrayed in the 21st century, but also to believe this could become the vehicle that rationalized trade in the Asia-Pacific, which is the fastest growing region in the world. So there is an implied bias on our part that other countries would join, but we have been very honest they have to meet those standards.

So there are outstanding issues we are working with each of them to resolve, but we will work through them with all of those issues that have been raised. And then, frankly, it is in Japan's hands to demonstrate its willingness to address these issues.

Chairman CAMP. All right. I just can't underscore how important addressing these persistent barriers are going to be as we move forward on that. So thank you very much.

And with that, I will recognize Mr. Levin.

Mr. LEVIN. Thank you, Mr. Chairman. I want to quickly pick up on that, because the question is regarding Japan and TPP whether TPP would be an adequate instrument to really open up Japanese markets. And so when we say that there are standards within TPP, the question is whether there are adequate standards and whether that would be adequate enough to change historic closed markets in Japan.

I went through a brief history of trade policy, because I think it is important to remind us where we were and how far we have come. And for years, there was a failure to address the structural challenges presented by Japan in agriculture and in industrial areas. For example, they manufactured in 2010 almost 10 million autos, and their domestic market is less than five million. And so if they were granted TPP entry and the tariffs went down to zero, their manufacturers would save roughly a billion dollars. And so far, the savings they have had from their closed markets have been used to sell the same auto here cheaper than it is sold in Japan.

So you ask an important question, Mr. Chairman. And we have to be darn careful. We say “we welcome.” The question is whether a welcoming will lead to addressing historic closed markets. It has been a one-way street. And I think as we talk about China, we should be—we should remember the difficulty that we have had with Japan.

I very much welcome the President’s decision to create the ITC, Mr. Ambassador, and you are going to take the lead. And I think it signals a much more vigorous effort by this Administration than past Administrations to get at the problem of an inadequate two-way street in trade with China and their using their structures to give them advantages that are inimical to fair trade—to free trade.

So I saw this story—and it was in The Detroit News—about the Ford F-150. I could take a DVD and use that as an example, but we would have to buy it illegally. So I didn’t want to do that. But you could take a DVD selling for \$1 in China, which—about something that just came out, and they sell it.

So this is a story about a Chinese truck that imitates the Ford F-150, which is apparently a complete imitation. And I think it raises all kinds of questions. I think China’s entry into the WTO was necessary. We set some provisions in there that unfortunately weren’t enforced. Now, the Administration is doing so. But I think that this picture shows the challenge that we face in making sure that China plays by the rules.

So we welcome their participation, but we have to insist that there be a fair set of rules that they follow, and I hope very much that this establishment of the ITC will be not only a signal, but an embodiment of a new effort to insist that China play by the rules. Is that really what you’re after?

Ambassador KIRK. Well, I think the short answer is going to be yes. I just would like to—and you know how much you and I think alike on these. I just want to make one point. For us, this isn’t a new effort. And again, I remind you when we were here last year—and this committee has always been wonderfully welcoming and supportive of us. But the biggest questions last year was why is everything taking so long, and we were very emphatic in our belief that our objective wasn’t just to pass three trade agreements, but

to really build a new template for trade, and I just—I said that from day one.

If you go back to the first trade agenda we filed with you, we identified enforcement as one of the keys to—we believe—beginning to rebuild America’s trust in our trade policy. And so this is a continuation of that. And in short answer, I would say to you, we have heard your concerns. On TPP, even though we don’t have trade promotion authority, we calculated that we have visited with Members of Congress and their staff over 350 times to hear your concerns on a range of issues. Those are important to us, but we are in a good place. And I would say this committee and Congress deserve a lot of credit.

The manner in which we passed the trade agreements, renewed Trade Adjustment Assistance, the trade preferences, and the strong bipartisan vote sent an unequivocal message to the world: The United States is ready to do business. We are open to do trade on the right terms. And we have got a great opportunity to move forward with that.

So one, we want to address these concerns, but we also want to do it in a way that allows us to try to take advantage of this and get access to these new markets.

Mr. LEVIN. Thank you.

Chairman CAMP. Thank you.

Mr. Herger is recognized.

Mr. HERGER. Thank you, Chairman Camp.

Ambassador Kirk, I want to join in thanking you for your efforts on free trade agreements this last year. As we continue to look for ways to increase exports and spur job creation in the U.S., I am concerned by the Administration’s seemingly paralysis on bilateral investment treaties.

As you know, exports and investments go hand in hand. U.S. investment abroad allows U.S. agricultural producers, manufacturers, and service providers to reach foreign customers. As such, we should be pursuing BITs to ensure that U.S. investments abroad are protected from arbitrary government actions and discrimination, further paving the way for U.S. exports to reach foreign markets.

Almost 3,000 BITs have been concluded worldwide, yet the U.S. is party to only about 40 of them. Those numbers demonstrate the extent to which U.S. businesses and their workers are being left behind in the global economy. Unfortunately, the Administration has announced no new plans for bilateral investment treaties since 2009. And the existing negotiation on the China, India, and Mauritius bilateral investment treaties have been on hold for over 3 years, because the Administration has not been able to conclude a review of the U.S. model that you use to negotiate BITs.

Mr. Ambassador, what plans do you have for moving our BIT negotiation forward and announcing negotiation for additional countries without further delay?

Ambassador KIRK. Mr. Herger, thank you, and I appreciate your honest expression of your concern on this. But I would like to tell you, just as we brought a very deliberate approach to negotiating the FTAs, we try to bring that same thoughtful deliberation to the BIT, the bilateral investment treaties.

We are hopeful that we will conclude our work on the new BIT model in the very near future. We have, in fact, intensified our engagement, at the same time, though, with important potential partners like India and China. We built on the successful visits of Prime Minister Singh to the U.S. and President Obama to India, for example, and got India to agree to a more robust engagement. We had one session in India in December. We are traveling to India within the next several weeks for the next meeting on that BIT. We have had over five sessions with China. We concluded a BIT with Rwanda, and again we hope to conclude work on the model BIT within the very near future that will allow us to go forward more aggressively.

Now, I appreciate your illustration of the numbers of BITs signed by other countries, but we have been trying to be much more deliberate through the President's National Export Initiative, frankly, working with our businesses and using a very targeted data-centric model for where we would go. The good news is, most countries in the world would welcome the opportunity to have an FTA, a BIT, or a TIFA with the United States. But we think that is a unique opportunity we have to induce them to change their behavior in many places.

But we want to go to markets in which it is in our collective best interests that will support that underlying concern that Chairman Camp mentioned, and that is job growth here and expanding our economy.

So I have heard you. Hopefully, we will give you good news on conclusion of the model BIT. But I do want to assure you that we are engaged, in particular, with India, with China, and Mauritius, and we will be looking for appropriate partners as we go forward.

Mr. HERGER. Well, Mr. Ambassador, I appreciate that, and I appreciate your hard work. But again, putting this in perspective, 3,000 negotiated worldwide, and we are party to only four of those. And we haven't had one since 2009. I would hope that we could, again, move a little more rapidly than we—

Ambassador KIRK. I do. And I don't mean to minimize that, but all agreements aren't equal. I mean, in one example, the Korea Free Trade Agreement is economically more compelling than the last seven trade agreements that we've done. So we are going to do them where they make sense, where they help us and help our manufacturers get important markets, and we still—I mean, I would remind you the United States is still the best market for foreign direct investment by a wide margin, almost 670,000 Americans owe their jobs to investment here. We are the most open market in the world. Our economy is still larger than the next two economies in the world. So we want to be very targeted and discreet where we use these. But I appreciate your encouragement.

Mr. HERGER. Thank you.

Chairman CAMP. All right. Thank you.

Mr. Johnson is recognized.

Mr. JOHNSON. Thank you, Mr. Chairman.

Ron, welcome back. I'm delighted to see you. You probably liked the Mayor's job better than the one you have right now.

Ambassador KIRK. This has been—but they have both been very rewarding. Thank you, Sam.

Mr. JOHNSON. Well, I know you're finally able to take care of the free trade agreements with the three countries you mentioned. You better than most know the importance of trade with respect to jobs and economic growth, especially how it affects the Dallas area.

So with that, let me ask you about the President's goal to double exports in relation to the President's corporate tax reform proposal he put out last week. As you may know, in that proposal, the President called for a minimum tax on foreign earnings of U.S. multinationals. Given today's global economy, I am trying to understand why the Administration would propose to make it tougher for U.S. companies to compete overseas, which would then make it harder for U.S. companies to increase their exports and create American jobs.

Later on, we are going to be hearing from Intel's chief operating officer, who, in his written testimony, puts it best by saying, "The revenue we generate outside the United States helps create and sustain our high-paying jobs at home."

So let me ask you: Wouldn't you agree this tax proposal would make it harder for American companies to compete globally?

Ambassador KIRK. Well, first of all, Congressman, it is always good to be with you, and I appreciate your strong support. You are probably not going to be surprised that I may not readily agree with your last statement. And you correctly noted—and I am proud to be a former Mayor of Dallas, home of the world famous Dallas Mavericks; thank you for bringing that up. But I am not a tax expert.

Sam, I would tell you everything we are doing as an Administration is designed to encourage job growth here at home. We recognize we live in a very different world now. And for many of our multinational corporations, whether it is Intel or Boeing or Microsoft or Google, they have to be engaged around the world. That is okay. But that ought to be a business decision. It ought not be one that our Tax Code incentivizes because they have the ability to make profits abroad and keep them home.

Now, where I would agree with the gentleman from Intel is that absolutely what we want to protect is that research, that investment, that core technology in which Apple creates the iPad here, and it may be assembled elsewhere. But millions of Americans have their jobs because we design, we create products from California to Texas to Illinois, and then they may be assembled elsewhere. We want to support that. But the President simply wants to use our ability to leverage our tax policy, which is a choice that says if we're going to incentivize behavior, we want to incentivize behavior that encourages keeping those jobs here.

Now, you asked about our National Export Initiative. The President challenged us in the State of the Union 2 years ago to double exports. We did that for a simple reason; we know about every billion dollars in exports support about 5,000 jobs at home. And if we could do that, that would be two million jobs. And one of the good news stories of our economic recovery—and we all know it is not enough—exports are helping to drive that. Our exports are up about 34 percent since that challenge. They were up 14.5 percent in 2011. Particularly in the farm economy we had a record year,

almost \$140 billion in agriculture exports with a \$41 billion surplus.

So this is working, but we want to make sure we continue that, because we are beginning to face headwinds as the global economy begins to stagnate in other places. Our tax policy can complement that by making sure we do things to create more manufacturing here. And what we are beginning to hear from manufacturing, particularly when the President held his in-sourcing conference, was more and more business had begun to realize, particularly with China where wages are beginning to rise and China's continued inability or lack of will to protect core intellectual property that, in many cases, they are better served bringing those jobs here. We think we ought to have a tax policy that helps sustain that.

Mr. JOHNSON. I agree with you, and I don't think we ought to double-tax people just for working overseas either. And I know you agree with that. We need to make it easier, not tougher, for American companies to compete globally.

Ambassador KIRK. We would agree on that.

Mr. JOHNSON. And I think you agree with that. And thank you for being here today, Ron. We appreciate you.

Ambassador KIRK. Thank you. Good to see you.

Chairman CAMP. Thank you.

Mr. McDermott is recognized.

Mr. MCDERMOTT. Thank you, Mr. Chairman.

Mr. Ambassador, Washington state—Exhibit A, for the argument, that trade represents enormous opportunities for U.S. workers, farmers, and business. According to The Washington Public Ports Association, roughly one in four jobs in Washington state is tied to foreign exports, and pay for those jobs is about 46 percent higher than the average in the state.

But my constituents believe—and I agree with them—that we have to get the full bang for our buck from all the trade deals. When a country signs a trade agreement with the United States, they have to fulfill their obligations. If we—if they fall down on the job, the United States should use every available tool at its disposal to make them live up to their commitments. It is just basic fair play.

Last year, my Democratic colleagues and I called for the development of a comprehensive and robust strategy to help rebalance our trade relationship with China, and pleasing to all of us was that the President responded and created the Enforcement Center in the ITEC in his Administration. This ITEC will increase the administration's ability to make sure that China and other trading partners keep their promises.

But it needs to be made clear; China's unfair trade policies have consequences not just for the United States and other developed countries, but for the developing countries as well, including countries in southern Africa. We can help lesser developed Sub-Saharan African countries compete against China by extending the third-country fabric provision, one of the most important elements of the African Growth and Opportunity Act. This provision, which expires in September, allows apparel producers in these countries to use third-country fabric in making apparel that gets duty free treatment under AGOA.

Sub-Saharan Africa competes with China in manufacturing exports. Last year, Charlie Rangel and I introduced legislation to extend the third-country provision until 2015. Identical legislation was introduced by Senators Baucus and Hatch last December. Now, both Chairman Camp and trade Subcommittee—Brady committed months ago to moving this legislation, and yet there is no action. Buyers are already turning away from the AGOA region, because they project out 9 months when they're planning their purchase of apparel. They can't turn on a dime. So this waiting until September to pass the extension doesn't really make any sense.

And I understand some Republicans have concerns about sending a revenue measure over to the Senate. If they need an ironclad agreement from Senators Reid and McConnell that there won't be any shenanigans, well, they will get one. We cannot wait any longer to act if we're serious in our economic development strategies.

I also want to take a moment to applaud the work of the USTR on Boeing-Airbus case in the 2011 appellate body decision that ruled that Airbus launch aid and other subsidies violated WTO. If the UA continues to drag its feet and doesn't withdraw the subsidies, then we should go directly to the compliance proceeding.

My staff has been working with Mr. Reichert's staff, the Senate, and folks in Congress that will really help the National Export Initiative to make us better at exporting. This bill will have no cost and will solve some real problems to increase exports, and I just want you to know that we appreciate your team's efforts on that behalf.

But I have one question for you. The May 10th changes—we are talking now about TPP and IPR medicines—the May 10th changes struck a fair balance between timely access to affordable medicines in developing countries and protection for innovation. In the TPP negotiations, USTR has proposed an alternative that throws off this balance in favor of protecting innovation. How have the other TPP countries, especially the developing ones, reacted to that proposal when it was tabled in the TPP negotiations?

Ambassador KIRK. Well, first of all, let me thank you for your kind words for USTR about Airbus. That is, I think, as good an example of where smart enforcement policy helps sustain jobs. It is spectacularly the largest, most commercially significant case ever decided within the WTO identifying almost \$18 billion in WTO non-consistent subsidies of Airbus to the harm of Boeing and their workers, and we are going to continue to insist that the EU complies with that.

With respect to the Trans-Pacific Partnership and access to medicines, frankly, again—and I think I have mentioned the extraordinary number of consultations we have had with Congress. We have had even more with NGOs and others. What we are seeking to do is make sure that we have the strongest disciplines in terms of protecting intellectual property, which is the lifeblood of America's economic growth, but also making sure we have access to medicines, that we encourage those that are involved in the production of these new lifesaving drugs to bring them to market soon.

We have a new approach that we are trying. It is called TEAM, Trade Enhancing Access to Medicines. We don't think it does any-

thing to diminish what we accomplished in the May 10th agreement. We have been very plain that we at least want to start with the premise, with respect to the Trans-Pacific Partnership, that we are to build on what we have learned in the past.

For the most part we have been doing trade agreements on the same model that has existed for the last 10 to 15 years. And we have a lot of challenges that didn't exist then—the involvement of state-owned enterprises, the explosion of the generic pharmaceutical industry, and we want to just make sure that we get the right balance between the two. That is what we have tabled. You have to know some of our partners don't want to do any of this, but I—while I—we will applaud, and the United States has a better than commendable track record of making sure that poor people around the world have access to these lifesaving medicines. We think it is not in our interest to do it in a manner that undercuts the basic premise of who does R&D and brings these medicines to life.

Chairman CAMP. All right.

Ambassador KIRK. So we are trying to strike the right balance.

Chairman CAMP. Thank you. Time has expired.

Mr. Brady is recognized.

Mr. BRADY. Thank you, Ambassador. I join Chairman Camp in thanking you and commending USTR for the good work on moving these trade agreements forward. Trade is jobs. It is the economic freedom to buy and sell and compete around the world with as little government interference as possible, and we know the world has changed. It is not enough to simply buy American; we need to sell American in every corner of this globe.

Clearly, with the passage of the three trade agreements, America is back on the trading field in a big way, but it is important that we not return to the sidelines. Our competitors are very aggressive, reaching negotiations that put us at a disadvantage. So it is important that we have a very aggressive, a very ambitious, as you said, 21st century trade agenda.

I commend your efforts on enforcement. I think they are critical, and I support them. But enforcement alone is not enough. We need an aggressive agenda that finds new customers for our businesses and our farmers, that tears down trade barriers and fights protectionism anywhere in the world. And it finds ways to move our goods and services better, faster, and cheaper to the customers in this world. That is what today is about, about finding out what that new 21st trade agenda ought to be.

So first, I want to start by issuing a broad invitation to all those in this room today and those listening to submit comments for the record for this hearing about what should be in the pipeline strategically from a market standpoint, from a facilitation effort, and for the next trade agenda for America.

And secondly, in going forward, Ambassador, I want to ask you specifically about Trade Promotion Authority. One of the lessons we learned from the three trade agreements was how invaluable a role having a clear up or down—timely up or down vote on those agreements was. You are currently negotiating the Trans-Pacific Partnership critical agreement. The President has indicated he would like to see it completed this year. It is important to our agri-

culture, service companies, technology, and manufacturing businesses throughout America. So clearly moving this forward this year is important, but how do we do that without trade promotion authority?

So my first question is: When will the President submit TPA for Congress's consideration.

Ambassador KIRK. Mr. Chairman, first of all, thank you for your strong support. I agree with you. First of all, we aren't going to conclude TPP without trade promotion authority. And we want to engage, frankly, with the leadership of this Committee on what we want in the elements of that bill, and then we will timely submit it to you.

But we have got to have it. We need to have it. It gives that protection of fast-track, which as you know, was invaluable. We would not have been able to pass the trade agreements with Korea, Panama, and Colombia without it. And one of the reasons we have had so many consultations with you is we hope as we get there, we have built up enough trust as to what elements—what is in that package. Then we can—design a thoughtful bill and move it hopefully rather efficiently through our committees of jurisdiction.

Mr. BRADY. Do you expect that? The reason I ask, one, Trade Promotion Authority is where Congress gives clear negotiating authority to the White House with clear negotiating objectives from Congress. And in return, we provide that timely up or down vote without amendments.

It is critical that our negotiating partners know that they have that assurance when negotiating important agreements like the Trans-Pacific Partnership. So do you expect us to see TPA from the White House sometime by the middle of this year, in the third quarter? With the work that you are doing on TPP, do you expect to conclude that by the end of the year, so this has to be in advance of it?

Ambassador KIRK. Mr. Chairman, I don't want to handicap whether it is the middle of third quarter, but obviously, if we are going to meet that objective of concluding, we are going to have to have it before the end of the year. I would say—and my thanks to the committee—that the credibility we gained by the strong vote in this Congress on the three FTAs sort of answered the questions from some of our negotiating partners, on whether we had the political move to go forward.

So one, it has not been a hindrance to us in terms of our negotiating thus far, and we have negotiated other trade agreements ahead of time without it. But obviously, we are going to have this resolved before we would bring TPP forward.

Mr. BRADY. Thank you. I think we have another chance for more bipartisan success on jobs for America through trade, and I think that is critical. Thank you, Ambassador.

Ambassador KIRK. Yes.

Chairman CAMP. Thank you.

Mr. Davis is recognized for 5 minutes.

Mr. DAVIS. Thank you, Mr. Chairman.

I appreciate you being here, Ambassador. We talked in December with Ambassador Marantis on a Trade Subcommittee hearing on the TPP. During that hearing, I asked Ambassador Marantis about

the letter the Kentucky delegation had sent you opposing USTR's proposal to exclude certain products, specifically tobacco. And the response that we got back from your office said that you were "still developing our negotiating position for the TPP" end quote.

As an ambitious trade agreement that I think has huge positive economic and national security implications for this country, I was wondering if you could tell us what factors are being considered in consultations to reach a decision regarding carve-outs, specifically the tobacco carve-out. And can you tell us if you are going to, in fact, exclude tobacco from the entire TPP or specific chapters.

Ambassador KIRK. Well, first of all—and thank you, Congressman Davis, but let me make it clear. We have not tabled any proposal to exclude tobacco or any product. So I know there is great concern from the Kentucky delegation. I was with Governors Beshear from Kentucky and Perdue from North Carolina. We understand their very strong passion on this. As you know, there are equal concerns from NGOs and those in the healthcare field that we not table anything that would restrict this administration's, this Congress' ability to regulate in the interest of public health.

And because of the passion on this on both sides, first of all, we have not tabled anything. We are trying to seek the proper balance between our stated objective of having a high standard, comprehensive agreement in which everything is on the table and as few carve-outs as possible, and at the same time, maintaining that core underlying standard of all trade agreements, and that would be nondiscrimination, that we would not treat other countries' manufacturers' products any differently than here—and that is the overall environment in which we are trying to come up with the proper balance on tobacco. But we have not yet concluded that.

But I want to make it plain. We have not tabled anything that would exclude tobacco or any other product.

Mr. DAVIS. Could you commit to us that you will stay in dialog with us as this position unfolds so that—

Ambassador KIRK. Absolutely.

Mr. DAVIS. And I'd like to switch subjects to another area of real concern. We talked a lot in this Committee about manufacturing. I spent my post-military life in manufacturing, and there are policies that really date to the Cold war on dual use technologies that don't reflect the reality of the international marketplace right now, specifically in the machine tool industry, which has always been at the heart or the cornerstone of American manufacturing.

I have two of the most successful machine tool producers in the world headquartered in northern Kentucky—Mazak North America and MAG, the former Cincinnati Machine. And for example, five-axis metal cutting machines, which are at the core of any product production, whether it is automotive, aerospace, any other type of manufacturing are tightly controlled by the U.S. Government.

Currently, it is creating huge competitive problems for us in Asia, in India, in Russia and China. And right now, there is at least 13 Chinese machine tool companies that build five-axis machines. They are exporting into other countries. The Europeans have a tremendous market advantage because of this issue.

And I would like you to comment first on the challenges that—how can we work together to overcome this export control problem

on what are obviously technologies that are widely available right now, and there are no defense constraints on, potentially changing the rules on that.

And also dealing with the issue of visa control, many of our international businesses that are very, very dependent on international exports to fit with the President's plan to double exports can't, in fact, get their foreign clients here through the visa process with the State Department. I know it is not directly under your jurisdiction, but as a trade ambassador, I think ultimately this affects your ability to promote American manufacturing and ultimately American jobs that will create a lot of export revenue for us.

Ambassador KIRK. Well, Congressman, yours was both a question and an answer, and I want to tread carefully, because, as you know, one of the realities of my job is that Congress retained the ability to implement commercial treaties, and you were very prescriptive about what I do. And one of the things I am most reminded of is that I am not supposed to make immigration policy, nor trade policy. But I——

Mr. DAVIS. Feel free. Everybody else does it, too. So——

Ambassador KIRK. I would say I think the President has—I mean, the common sense of what you have said—if part of our growing our economy and creating jobs is taking advantage of the opportunity to sell more of what we make to the rest of the world, it would just make sense that our customers ought to be able to come here and learn about the products and have access to the people that are going to be supplying them and teaching them. I think the President has said—is correct; the best way to address this is part of comprehensive immigration reform, but you have stated the obvious. We frustrate our own efforts when our visa laws are so—can be so restrictive that it makes it difficult to support our underlying ambition to sell more around the world. But I would just say I think that speaks to the need for Congress in a bipartisan way to do something that makes sense.

With respect to export controls, as you know, the President asked then Secretary Gates to work with Secretary Locke at Commerce to modernize our export control regime. Many of these laws made sense 50 years ago when we were in a Cold war with Russia. We will absolutely not compromise on the core underlying principle that we aren't going to share technology with countries that might seek to use that against us. But for the overwhelming majority of products, we think that should be modernized.

I know Secretary Bryson is working in an expedited manner to try to address that, because we have heard from too many businesses like the one you mentioned that the United States is just losing out on technology that people can easily go buy in another market. And we want to have that opportunity for our manufacturers.

Mr. DAVIS. Thank you.

Thank you, Mr. Chairman.

Chairman CAMP. Thank you very much.

Mr. Neal is recognized.

Mr. NEAL. Thank you, Mr. Chairman.

Mr. Ambassador, I have been hearing from companies in Massachusetts, as we discussed earlier this morning, that manufacture here in the U.S. and also import that a free trade agreement with the European Union could be beneficial both in opening European markets for U.S.-made products and for reducing cost to U.S. consumers for certain European products that they import.

The Port of Boston would be an obvious gateway to expand a trade with the EU. Is USTR considering a U.S.-EU FTA, and what might be the status of your discussions with your EU counterpart about this possibility?

Ambassador KIRK. Congressman, we are engaged at the direction of President Obama following the visit of the President of the EU here last fall. He and President Barroso instructed us to create what they call a high-level working group. And with strong encouragement from businesses across the country, we are exploring all options. Now, we have been very careful not to cast it or bias it ahead of time by saying it would or would not be an FTA, and frankly—and it is a great opportunity to remind us that by a huge margin, this is the largest commercial relationship in the world.

And frankly, one of the things I instructed our negotiators is to adopt, I guess, the trade equivalent of a Hippocratic Oath—let's do no harm—because this relationship has sort of worked without government—but we are exploring everything across all areas from a services liberalization to non-tariff regulatory coherence. We have had about five meetings since the presidents have asked us to do that, but have tried our best to not restrict our teams as they work through it, but be practical, see where we have opportunities to liberalize trade, take cost out of the systems, but try and not prejudice the outcome.

Mr. NEAL. And on a more parochial matter, we spoke again about enforcement today, and China has had severe problems with mandatory third-party auto liability insurance markets, and as this problems have become more compounded, the difficulty we have is that when we thought this was going to be an opening for American financial services. If anything, it has been a stalemate. I think that might be the best description. So I know that you have embraced firm enforcement as part of your tenure. And I hope you won't take your foot off the pedal on this issue.

And I hope we are not going to lose momentum to make sure that China doesn't drag its feet in fulfilling its promise. As we indicated, there has been a huge chasm between those who thought that this was destiny in terms of new financial opportunities only to discover the impediments in those markets have not turned out to be quite what was anticipated. And enforcement remains a big issue for all of us here, and I think that with full market access for our companies, that they will be able to readily apply for licensure along those lines.

Ambassador KIRK. Yes. First of all, again, I think the President's initiative in creating the taskforce demonstrates our resolve to keep our foot on the pedal. And with respect to the third-party liability in the auto industry, one of the better outcomes from Vice President Xi's recent visit was we were able to get a very firm commitment from China that they will open up that market.

Now, what we have to do is make sure we are diligent, as you said, working with China that they will move quickly to implement the regulatory changes to enhance that. But hopefully, by the time I see you again, we will have companies selling in that market.

Mr. NEAL. Thanks. Thanks, Mr. Ambassador.

Thanks, Mr. Chairman.

Chairman CAMP. Thank you. Mr. Reichert is recognized.

Mr. REICHERT. Thank you, Mr. Chairman. Welcome, Mr. Ambassador. Good to see you again. And again, congratulations to you and your team, and I really appreciate your presence here and your open, honest answers. We have worked well together, the Committee and your office and my office personally. I appreciate your efforts.

I want to touch on something. My focus will be all on jobs. And of course, this, you know, trade is essentially really, bottom line, about jobs. I know you're not a tax expert, but I just want to mention the Harbor Maintenance tax and how it impacts, especially the West Coast and the business that we're losing to Vancouver and Prince Rupert ports. The Longshoremen, Longshore Union and our Port Authority people are very, very nervous about how this impacts our trade opportunities especially in Washington State, in my case.

If you could respond in writing, we'll follow up this question with a letter, and hopefully we'll get an answer back on what the administration's policy might be on this. So as far as the free flow of electronic information, you've touched on it just a little bit, it's critically important, as you know, to U.S. companies that sell goods and services over the Internet. The e-commerce—and e-commerce is something we know, I think, a little bit, we know a little bit about in Washington State, but we know that some foreign governments block, you know, these efforts and the flow of information. Other foreign governments require online service suppliers to process data locally or to locate servers in their contracts.

These types of restrictions can impede trade, undermine the competitiveness of U.S. companies, and cost American jobs. This is a real twenty-first century trade issue. And to create a free trade agreement included landmark provisions on these cross-border data flows. Do you agree that the Trans-Pacific partnership must include strong provisions ensuring the free flow of electronic information?

Ambassador KIRK. Absolutely we do, Congressman Reichert. And first of all, thank you again. You have been wonderfully supportive, and I appreciated your hosting the ASEAN trade ministers with us when we came out. But we agree with you, and I think you know we have worked with you and other Members to table what we believe is a very thoughtful, commonsense e-commerce provision in the Trans-Pacific partnership for the reasons that you articulated.

Mr. REICHERT. Thank you. And my last question, quickly, is regarding the Export-Import Bank. And, you know, we hear the administration talk a lot about manufacturing, but it's kind of rare when you hear officials talk about the importance of services. And we all know that services are 70 percent of our economy and 70 percent of our jobs, getting back to jobs. Services like financing, in-

insurance and express deliveries don't just create jobs, but they create high paying American jobs and further, they enable manufacturing and they enable exports. And the Export-Import Bank is up for reauthorization.

There are many who talk about the banks in terms of what it means for America's largest employers, but a lot of folks really sort of dismiss the small business impact here of the Export-Import Bank. Can you explain, really, how important it is for the Export-Import Bank and their relationship with small businesses in the United States, please?

Ambassador KIRK. Thank you. I'm happy to and again, I recognize I'm here as U.S. Trade Representative, but, you know, one of the good things we've worked with you on, exports are a great story right now. Our exports are up. We are in records across all services, all sectors. Manufactured goods are up 34 percent, agriculture is up 31 percent, services is up 21 percent in comparison to 2009. In just about every country in which we trade, we have a surplus in services. Seventy percent of Americans work in the service sector. Ninety-seven percent of U.S. exporters are small businesses, many of them in the service sector.

So first of all, we acknowledge everything you say, Congressman. We are working. That's why we are specifically addressing services liberalization in the Trans-Pacific Partnership. It is one of the larger opportunities we have in Korea; for example, which has over a half a trillion dollar services market. But I think it's also critical, that Congress renew and extend the authority of the Export-Import Bank. I think, and forgive me, I don't know the exact numbers, I want to say they have about a hundred billion dollar lending cap. They are effectively at about 95 percent of that. That's going to run out in the next 2 months.

And so as well as we're doing, we're going to lose the ability to finance many of our products, and particularly, for small businesses. And so I think it's critically important that the Export Banks' caps be lifted, they be extended. They cost the taxpayers not one single dollar. They are financed through their transactions. It's one of our better stories. They enable many of our small businesses to grow and compete. So hopefully we can work with Congress to extend that.

Mr. REICHERT. Thank you.

Chairman CAMP. All right. Mr. Boustany is recognized.

Mr. BOUSTANY. Thank you, Mr. Chairman. Congratulations, Ambassador Kirk, on getting a job well done with you, your staff working with this Congress to get these three free trade agreements finalized. That is singularly the most important jobs legislation this Congress has passed. And it's bipartisan. It's something we should all be proud of. But that doesn't constitute a twenty-first century trade agenda. In fact, if I could use a simple football analogy, it's almost as if we're deep in our own territory playing defense and we finally created a turnover. Now we can go on offense, but now we have to take advantage of this and move forward.

And so we need to continue to knock down barriers, you know, continue with enforcement, and also look at hurdles that we have to overcome here internally. And I want to join with Chairman Herger over my concerns about the lack of progress on getting a

model bid in place and also moving forward with the negotiations on a bid with both China and India.

But if I could direct my questions to you on a couple of things with regard to China. Obviously, a broad range of issues out there. But two often overlooked areas are SMEs and the impact that they play on getting American exports into the Chinese market and services where we have a growing trade surplus of services. But we still have major problems there. I mean, for instance, currently we have 27,000 U.S. SMEs that exported to China in 2009. We can grow this, and this is an area that I think clearly my district we're seeing expanded activity, but there are significant barriers and problems in place.

The same thing with services. Even though we do have a surplus with China, there are a number of issues with licensing and so forth that we need to—I would like to know what is the administration doing specifically in these two areas and what are our metrics. I mean, beyond just hearing what President Hu has said, statements from Wang Qishan, Mr. Xi was here earlier, but what is going on. How are we ensuring this follow-through in China on these things that we're agreeing to and what are the metrics to show progress?

Ambassador KIRK. Okay. If I could take those separately because with the SMEs, through our export promotion activities, our Trade Policy Coordinating Committee, we have very specific metrics, but in many cases not country-specific. Maybe I will take that remark back.

I think you all know we have only, surprisingly, about 280,000 businesses in the U.S. of any size that export. Ninety-seven percent of those are small businesses. One of the first things I did was ask the ITC to do a study to help us understand who they were. And that's, from my bias back when I was a Mayor; the most important thing is to find out who your customers are.

So one of our first metrics is one, if we could just double the amount of small businesses that export because small businesses who export grow more, pay more, hire more. We represent only about 1 percent of the universe of all small businesses in the U.S. Now we've been more discriminating than that because our SBA administrator helped us understand small business is broad enough to capture everybody from the sub shop, but, you know, of those that could export, we're trying to double that. We're providing more knowledge, more trade, promotion authority, financing, a number of those things. But if we can double that, get that from 1 percent to the global average of 2 to 3, I think you can understand the role that will play in jobs.

Secondly, I'll be honest, many of our small businesses export to only one country, one customer. So that's a great place to start. If they're exporting, they're not afraid of it, and we're working to help them grow and expand. Now, I'll be honest. With many of our small businesses, the best advice we tell them, you be very careful about going to a country like China because frankly, you know, Boeing can survive a five-year fight over Airbus. That small business that Congressman Neal and Congressman Davis mentioned, they can't. And we really steer—

Mr. BOUSTANY. I've had companies that have had similar problems.

Ambassador KIRK. Right.

Mr. BOUSTANY. But one, we try to work with them to make sure they go somewhere there is going to be respect for rule of law; their product isn't going to be ripped off. Broadly on China, we're doing everything through the strategic and economic dialogue, the JCCT. We are taking them to court. They have a very close service market. As you know, we sought WTO panel consultation, for example, in the payment of electronic services to try to open up that market, but the pace nearly isn't to our satisfaction. And again, one of the rationales behind creating this trade enforcement center is so we can be more aggressive in taking some of those challenges.

Mr. BOUSTANY. Thank you. I yield back.

Chairman CAMP. Thank you. Mr. Becerra is recognized.

Mr. BECERRA. Thank you, Mr. Chairman. Ambassador, thanks for being with us. And let me congratulate you and the administration for the work you've done, the successes you've had. And I believe that America, its workers, its entrepreneurs, its businesses, its farmers are all very much looking forward to your continued success as we try to open up markets in a fair and competitive way for our businesses and our workers here in this country.

I also want to applaud you, by the way, for the work that this administration has done and its recent announcement, in fact yesterday's announcement, about the establishment of the trade enforcement center. That, I believe, will help us continue in this march towards the competitive and level playing field for American businesses and American workers. I hope that you can get that up and running very quickly. If we have that robust commitment to enforcement, I think that will be the key to helping establish broad support for a trade agenda here domestically and certainly to help make sure that we have that even playing field abroad for our companies and our workers to get out there and open up markets.

I wanted to focus most of my time, if I could, just on the questions pertaining to the trade agreements that were recently signed. I just got back a couple of days ago from Colombia and had a great visit, a remarkable visit with President Santos of Colombia who is trying to do some remarkable things for the country. They have made some great strides in the last several years, and they acknowledge that it is because of U.S. support and investment and cooperation that they've been able to make some tremendous progress there. And they are working with us to try to make sure that implementation of the different commitments and promises made in this trade agreement are achieved.

One of those very important commitments was in the area of labor, as I know you know this very well because you were very key in getting those terms agreed to. President Santos seems very committed to making sure we're well on our way to getting those pieces of the puzzle in place on the Colombian side. I'm hoping that you can give me a sense of what we're going to do to help monitor and assist Colombia as it tries to move forward because some of those commitments are going to be tough. They require institutional change.

The issue of assassination of individuals simply because they happen to be trade unionists or the issue of the suppression of the ability of workers to try to collectively bargain are still there. And the President was very clear that he is committed to try to move forward on improving the situation there for Colombian workers so that American workers and American businesses can trade on an open and level playing field. But can you tell me what we're doing to try to, for example, help them further integrate these commitments into their institutions?

Ambassador KIRK. First of all, Congressman, again, thank you for your kind words, and thank you for your strong support and advocacy on a number of these issues. One, I would hope that perhaps if not with you personally, my staff could follow up with your team just to get a better sense of what you learned.

One, I would say we have made very good progress, not only with Korea, which will go into force March the 15th, but Panama and Colombia as well. We realize, as Congressman Brady said, the first step is passing these agreements, but to get the benefits, we need to get them entered into force. I know for you and many Members of the Committee, particularly from the Democratic party, absent this strong labor action plan, we wouldn't have gotten the strong bipartisan support we did. Because of that, the President made a commitment we would make sure that that was implemented, not only in the letter, but the spirit of it as well.

Now we have some more work to do, but we have been very encouraged, frankly, with President Santos' very quick implementation of a number of those. As you know, one of the reasons we delayed bringing Colombia forward, we wanted to see these changes in law. We didn't want lip service. He did that. He appointed, I think, to many people's, frankly, surprise, one of the most respected labor leaders in Colombia as the new head of a new separate labor ministry.

And Minister Pardo, I believe, came and met with a number of you here. He has met with labor leaders here. They have moved to hire many of the inspectors within the Labor Ministry that we've asked. They have worked, frankly accepted technical assistance from our Department of Labor, as well as the International Labor Organization. They have moved to address concerns in some of the most important sectors we asked them in terms of not only identifying issues, but bringing—holding people accountable.

Now there is more to do, but at least it feels like they are absolutely meeting both the letter and the spirit of what we have asked them to do. And so we have made this a very collaborative process. And I very much have to highlight the strong involvement of Secretary Solis and her team and working with them. But at least thus far, it has been a very good, strong collaboration, and we'll continue to monitor and give them that technical assistance where they have asked for it.

Mr. BECERRA. And my time has expired. So I'll just close by just saying that I agree with everything you said. And maybe we can work with them on their inspections and on their interpretations of some of the laws. But I agree with you, they're trying to make progress. And thank you, Mr. Chairman.

Chairman CAMP. Thanks. Mr. Buchanan is recognized.

Mr. BUCHANAN. Thank you, Mr. Chairman, and I want to thank the Ambassador for being here today and especially, as everybody has mentioned on the free trade agreements, it's huge to Florida. As you know, Ambassador, we've talked about it. We have 14 ports, \$68 billion worth of economic activity. And so I want to thank you again for your leadership on that.

Jobs. That's what we're all here for today. Last year I introduced a 10 point jobs plan. One of the key parts of the jobs plan was China's blatant disregard for intellectual property rights. It was reported by the U.S. International Trade Commission that Chinese piracy and counterfeiting cost American businesses an estimated \$48 billion in 2009. The report concluded that 2.1 million jobs could be created in the U.S. if China complied with their international obligation to protect and enforce intellectual property rights. Ambassador, what are we doing about that and are these numbers remotely correct? That's what I've been told and verified. So I wanted to get your thoughts on this.

Ambassador KIRK. Well, not having been involved in this study, and I think Congress very wisely separates the analysis of the value of our trade work from the responsibility to negotiate and enforce them between USTR and the International Trade Commission, but your numbers seemed at least remarkably similar. I think it was Chairman Levin that mentioned the same study.

From my perspective, again, my bias having been a local official, if it's two hundred jobs, you know, if it's a thousand, they're worth fighting for. But clearly, China could be much more aggressive in enforcing and combating piracy and theft. It cost us billions of dollars of revenue to American businesses and lost jobs. And for that reason, it is one of the issues that we most persistently and singularly raise with China to work at, from engagements by President Obama and Vice President Biden to our work at the JCCT.

One of the practical facts that we've heard from many of your businesses is that China typically tends to respond when we have an event. When we have a presidential visit, we do something. And they love special campaigns. And so for 6 months, they do really good. And then they go right back to doing what they're doing.

Mr. BUCHANAN. Well, they're saying 2.1 million jobs could be created. So I would like to have you look at that.

I just want to touch on another question. The Panama trade agreements. It's been brought up by a lot of businesses in Florida to me is that even though they've been enacted, the U.S. exporters are still unable to reap the benefits of the agreements until it actually goes into force. That means U.S. exporters still face tariffs in Panama. Meanwhile, Canada and European unions and others are taking advantage of doing business with Panama.

What can we do to move these along more aggressively. I know you're working on it, but what more could we be doing, in terms of the administration, to get these enacted because it's costing us, you know, not only business, but jobs all over the country. But I'm looking at Florida.

Ambassador KIRK. Well, frankly, Congressman, you've done your part in giving us a strong vote, and I just want to assure you, we're moving as aggressively with Panama. We sent teams down to Panama last fall. The good news, we just received some of the docu-

mentation that Panama is required to submit. And now we're going through the process of analyzing that to make sure it does what we want. But we are moving as diligently——

Mr. BUCHANAN. Do you have a time line, or maybe you have something because I get asked that a lot exactly where——

Ambassador KIRK. You know, I hate to put a specific time on it. You know, we wanted to have them all done as soon—we're aware they have been at that trade agreement with Canada, and we don't want to lose ground. The other element, and it goes to, if I could, just the point you made about infrastructure and similarly Mr. Reichert and Mr. Boustany. We have a great opportunity with the opening of the Panama Canal, but a challenge to address our port infrastructure all around the country because that's going to be a huge opportunity for us to increase our exports.

Mr. BUCHANAN. Thank you. I appreciate the opportunity.

Chairman CAMP. Thank you. Mr. Smith is recognized.

Mr. SMITH. Thank you, Mr. Chairman, and thank you, Ambassador. I appreciate your service and certainly, the agility of USTR to, I guess, act with the benefits of Americans in mind in production and certainly Nebraska agriculture. I was wondering if you could provide an update on Japan's age restriction on the U.S. beef imports to 30 months and under and also how the U.S. is assessing Japan's interest in joining the TPP.

Ambassador KIRK. Thank you, Congressman. The exclusion of U.S. beef from the Asian market, as you know, over the last 8 years has been crippling to our beef industry. We have done a better job of getting back into on U.S. agriculture exports to Korea. And the good news, with two-thirds of tariffs Korea has going away on March 15th, we expect to see our agriculture exports there do even better.

We have met with Japan I can't tell you how many times to try to get them to comply and accept the fact our beef is as safe for consumption as any in the world. The good news, we have pressed them that they are now undertaking the risk assessment they have told us that they would to determine the safety of our beef. We are hopeful we can get them to conclude that and we can be back into that market soon because it is critical for beef suppliers all around the U.S.

Mr. SMITH. Right. And certainly, this speaks to the sanitary, and vital sanitary issues that a lot of times our trade partners, I guess, don't go off of the science-based standards. What do you see as perhaps an opportunity to perhaps go beyond what past trade agreements haven't stated or even beyond what the WTO has in place?

Ambassador KIRK. Well, our first goal for all of our partners, whether its China, Japan, Mexico, Europe is look, just play by the rules and accept sound science. We can't allow cultural differences of the others to distort the market. So one, we seek that level of compliance with everyone. Two of the opportunities we have are if we can get other countries into the Trans-Pacific Partnership, one element is going to be some of the strongest sanitary and phuto-sanitary standards. And secondly, we referenced earlier one of the real benefits. For example, if we can lift the Jackson-Vanik restric-

tions when Russia joins the WTO, for the first time they would have to adhere to those sanitary and phytosanitary standards.

So we're using the opportunity to grant permanent, normal trade relations to Russia, as well as the development of the TPP, to try to enhance those standards and open up markets for American agriculture. And I referenced earlier, I won't go through it, but agriculture is one of our good news stories in our export policy. I'm sure you know we had a record year last year. \$140 billion dollars with a forty-one billion dollar surplus.

Mr. SMITH. Right. And you touched a little bit on the situation with Russia. Now very specifically, there have been very tangible, negative results from the restrictions that Russia has placed on U.S. pork. I mean, we had record levels of exports of pork to Russia and then when some, I would say, non-science-based issues entered the equation, the numbers changed. What can you assure us will be done about that.

Ambassador KIRK. Again, the first step would be for us to recognize that our granting Russia permanent normal trade status is decidedly in our interest. We are not required to lower one tariff. It would, for the first time, give our exporters, our farmers, at least access to dispute resolution. But we would have also the opportunity to compete for those TRQs.

And I have to tell you the point, no one has been more supportive broadly of our trade initiatives than the pork industry. But I understand their very legitimate frustration in Russia because of the behavior of their Agriculture Ministry. But having more tools to confront them, Congressman Smith, would be the first step. And that's why we will be working with you to address the issue of Jackson-Vanik.

Mr. SMITH. Great. I appreciate that. And I think, you know, in closing, there are some great opportunities in the world. Obviously you've touched on those. Great background in agriculture now with the numbers speaking for themselves of what trade can accomplish. And so I'm excited that our governor is planning to travel to China this summer on a trade mission. And so I think the opportunities are out there, and I look forward to working with you to make sure that we do move forward with a level playing field in mind. Thank you.

Ambassador KIRK. Thank you, sir.

Chairman CAMP. Thank you. Mr. Doggett is recognized.

Mr. DOGGETT. Thank you, Mr. Chairman. And thank you, Ambassador. Good to have you here. I think all of us recognize the potential of the Trans-Pacific partnership, and as with any trade agreement, there are pluses, and there are minuses. My concern would be that there is as much attention at USTR focused on minimizing the harm from such an agreement as maximizing the many potential good benefits of the agreement.

My understanding from prior testimony we had from your office is that you envisioned having the same standard applied to New Zealand and us and Vietnam. Is that correct? Do you expect there will be separate provisions so that some countries are dealt with differently than others?

Ambassador KIRK. Congressman, without knowing specifically—and it is always good to see my mother's congressman.

Mr. DOGGETT. That's right.

Ambassador KIRK. She will send you her regards. And I am glad it sounds like we finally got a map in Texas.

Mr. DOGGETT. Right.

Ambassador KIRK. Our ambition, at least among the nine countries that initially decided to go down this road together, was let us not wait on what is going to happen in Doha or APEC; let us try and develop a new trade model for the twenty-first century with the highest standards knowing every country is going to have some challenge.

But at least let us start with the proposition, we want a high-standard agreement that everybody has got to play to and that this would not be the place to try to draw those distinctions between developed economies or maybe least-developed or emerging economies, that if you sat at the TPP table, which we gave Vietnam 24 months to make that decision, for example, then we would say, "You take all the time you need to come here, but here is the price of admission. We are going to ask you to aim high and reach high." And at least that is the method by which we have progressed to this point, Congressman, and we still want to adhere to that.

We want to have a high-standard agreement to which all of the parties are sort of on the same level, and the decision as to whether you want to meet those standards is up to individual countries. But from our perspective, we want this to be applied across the board.

Mr. DOGGETT. Do you anticipate then asking Vietnam to meet International Labor Organization standards, core principles?

Ambassador KIRK. Yes, we do.

Mr. DOGGETT. And given its history of a lack of protection for workers, how do you see them getting there?

Ambassador KIRK. Look, this is going to be a big lift for them. But to their credit, I would say this, there were no surprises. We were very honest. We were going table a labor agreement that incorporates core American values. Vietnam has a further road to travel, but at least every step of the way, they have said, "We understand that, and we are going to aspire to that."

Now our team just came back from Vietnam. We were encouraged. They have, for the first time, sort of welcomed the ILO to come in and help them design some of their structures. They have got a lot to do. I don't want to underscore the fact this is, for Vietnam, a much heavier lift than others. We are doing everything we can to provide them technical assistance. There are some areas they are going to say—they are going to do the, we are new, we are young, but that is inherent in any trade negotiation.

Mr. DOGGETT. Are there also transshipment issues with Vietnam, Malaysia, some of the other countries? And has transshipment of Chinese goods picked up in Korea since that agreement has been ratified?

Ambassador KIRK. It has not in Korea. Because of you all's concerns, particularly about North Korea, as you know, we were very careful to craft an agreement, and I would say—Korea and the U.S. were interested in drafting an agreement that would help businesses in Korea and the U.S., not in China. That issue has come up particularly in the textile chapter, frankly, because there are

some American businesses who don't want any restrictions on their ability to take goods from China and ship them through.

We think this should be for the benefit of Vietnam, and we also want to protect a U.S. textile industry that, perhaps more than any other industry, feels like they have not been as well represented in our trade agreement. So we are trying to get the proper balance with our yarn-forward provisions and others that will protect the interest of our textile industry that is doing okay, but gives the incentive to Japanese suppliers, and not those being—

Mr. DOGGETT. And what about the concerns that this Committee and you have dealt with on many occasions concerning currency manipulation in Asia. Would you expect that this partnership would address the currency manipulation problem?

Ambassador KIRK. Well, we are going to have an opportunity, as the Chairman said, I think, to talk extensively about that and other issues. We know that's an issue for you, but our partners understand our concerns. Typically, that's an issue that's been difficult to define in the context of a trade agreement. But the core for us, we want an agreement that gives American exporters, farmers, entrepreneurs access to what is going to be the fastest growing region in the world, but gives us a level playing field and the opportunity to create jobs here.

Mr. DOGGETT. All right. Thank you.

Chairman CAMP. Thank you.

Mr. Shock is recognized.

Mr. SHOCK. Thank you. Welcome, Ambassador. Thank you for your good work on the three trade agreements. Appreciate your leadership on that.

Questions about TPP, first question about U.S. biological medicines, many of which are produced in my home state of Illinois. When your Deputy Ambassador Marantis was here last December, I specifically asked him about whether or not USTR would be working to ensure that the same U.S. laws that protect U.S. biologic pharmaceuticals here in our country, specifically the 12-year period, would be included in TPP to ensure that those same safeguards and IP protections are in place in the countries we are about to trade with.

Do you know if USTR has made a decision on that?

Ambassador KIRK. Again, this is an issue, Congressman, where we understand that there are very strong differences. We are aware. Congress, I think, in the health care bill put in a 12-year period for biologics, but as you know, the administration in its budget has wanted a 7-year period, and I think you can understand where my equities would come down on that, but we have not tabled a provision on the biologics yet as we continue to try to see if we can't find the proper balance between the two.

Mr. SHOCK. Well, I am not sure even the most optimistic Member of congress would assume that the President's budget's going to pass considering the fact last year his budget didn't get a single vote, even from his own party, but having said that, whether the period is 7 years or 12, would it be a more fair question to say regardless of what the U.S. law is of the land at the time you negotiate TPP, that it will be your objective to ensure that whatever

that period of protection is in U.S. law, you will work to try and get that same protection as a part of TPP?

Ambassador KIRK. We are going to try to get the strongest provisions that we can, and understand, this is one where we have some of the strongest headwind because of some of the other countries that frankly have a very different approach to this.

Mr. SHOCK. Well, you can understand our concern in terms of protecting our jobs here in the country in intellectual property and the money that is invested there if we don't have those same protections.

Ambassador KIRK. Yes, sir.

Mr. SHOCK. Second, state-owned enterprises, you are well aware of the large amount of foreign and direct investment specifically from the country of China. Overwhelming majority of that foreign direct investment is from state-owned enterprises. What assurances can you give us that TPP will have not only mechanisms in—not only rules in place, but most importantly, mechanisms in place to enforce competitive disadvantages that state-owned enterprises may have when dealing with market-based companies here in the United States?

Ambassador KIRK. Well, the best answer I can give you, and understand, we haven't finished, but I will tell you for precisely the reasons you articulated, Congressman, this is the first time we have ever tabled a separate chapter on state-owned enterprises. We have heard from you, but just as critically we have heard from businesses the frustration with dealing with them, competing with them, and for that reason, we have insisted, and we have tabled, a chapter on state-owned enterprises to make sure that if they are going to be there, they have got to be transparent. They have got to operate on market principles, and then having disciplines that we didn't know about, say, for example, 10 years ago, trying to build those into the Trans-Pacific Partnership.

Mr. SHOCK. I have a specific question about whether or not the administration is prepared to rethink the need for maintaining high tariffs on consumer goods. As you know, when we do that oftentimes it is consumers who pay those higher tariffs, specifically one industry is the footwear companies who—virtually no footwear is produced here in the United States, and by having large tariffs on U.S. based companies, produced goods overseas and import, you are basically taxing, quite frankly, the middle class and the people who are buying those consumer goods.

I have heard the administration say we need a 21st century approach to this. How do you see that shaking out?

Ambassador KIRK. Some of your colleagues from the northeast would be quick to tell you there is some footwear made here with L.L. Bean and with New Balance, and again, as with everything, we want to strike that appropriate balance. If there is anything on which we all agree, the real winner of trade liberalization are consumers. But even the American public have told us they don't want to trade cheaper t-shirts and tennis shoes for jobs. So we want the right balance to make sure we aren't punishing consumers, but we want to protect America's manufacturing base where we can.

Mr. SHOCK. Okay. Finally, the pork industry in the United States is being significantly hurt by Canada's recent addition of

Federal subsidies, their provincial and Federal Government subsidies, of their hog industry, and as a result, pork producers here in the United States have calculated it is going to cost thousands of jobs, putting our pork industry at a competitive disadvantage because the Canadian government has decided to subsidize their production.

I am just wondering if Canada's inclusion in TPP eventually would—that perhaps would be something that would be on your radar to get them to back down from their federal subsidies of that industry.

Ambassador KIRK. It would be, and as you heard me say, Congressman, no industry has been more supportive of our trade liberalization than the pork industry. One of the issues they have raised, and we will address with Canada honestly using the information we've gathered from the Federal register process we went through in terms of their joining TPP, would be this issue.

Mr. SHOCK. Okay. Thank you.

Chairman CAMP. Thank you.

Ms. Jenkins is recognized.

Ms. JENKINS. Thank you, Mr. Chair, and thank you, Mr. Ambassador, for joining us and all your good work last year on the trade agreements.

The free flow of electronic information is critical to U.S. companies that sell goods and services over the Internet and unfortunately some foreign governments blocked those flows. Other governments require online service suppliers to process local data or to locate servers in their countries. These types of restrictions can impede cross-border trade, undermine the competitiveness of U.S. companies, and cost American jobs. This is true certainly here in the 21st century.

Do you agree that the TPP agreement must include strong provisions ensuring the free flow of electronic information and can you just comment?

Ambassador KIRK. Congresswoman, I agree with you completely and for that reason we have tabled provisions to address exactly what you say.

Ms. JENKINS. Okay. Thank you.

And then to follow-up on Representative Smith's questions, being from Kansas and Nebraska, farmers and ranchers rather important to those of us in the Heartland and certainly our U.S. farmers and ranchers continue to face these significant sanitary and phytosanitary barriers in their efforts to export to China.

I am concerned that China continues to maintain a series of regulations and restrictions on U.S. exports of fruit, potatoes, beef, pork, poultry, et cetera, that aren't supported by science and the independent U.S. International Trade Commission estimates that elimination of Chinese tariffs and nontariff measures could lead to an additional 3.9 billion to 5.2 billion in U.S. ag exports to China. These new exports would support tens of thousands of good paying American jobs.

What is the administration doing to address the persistent tariff and nontariff barriers that block U.S. exports to China?

Ambassador KIRK. Well, again, Congresswoman, I mean I couldn't agree with you more, we have visited Kansas and I have

talked with Senator Roberts and others extensively. I don't disagree with anything you have said. We continue to press China to adhere to sound sanitary, phytosanitary standards. We have challenged them in the WTO against, we think, non-consistent duties they have put on poultry. We have challenged them.

We got a little bit of relief in the JCCT 2 years ago, if you remember, after the—no, I am not supposed to call it swine flu, whatever we call it, the viral scare.

Ms. JENKINS. H1N1.

Ambassador KIRK. H1N1.

Ms. JENKINS. Yes.

Ambassador KIRK. We were able to get back in that market. Know that we work, I mean, almost daily with Secretary Vilsack and his team to try to get China to a better position, that they will do it, and where we can't do it in negotiation, we have demonstrated we are not afraid to take them to the WTO, and I would just say again, that is one more, I think, evidence of the wisdom of the President in creating this Interagency Trade Enforcement Center.

Ms. JENKINS. Well, we thank you for your past support and encourage you to stay diligent and help us out. Thanks.

Ambassador KIRK. We will, but, also, don't forget about Africa. When we had the AGOA forum here last year, we deliberately took them to Kansas because it was a great opportunity. They wanted to study more some of our standards in terms of agriculture production and you all were a great host.

Chairman CAMP. Thank you.

Mr. Thompson is recognized.

Mr. THOMPSON. Thank you, Mr. Chairman. Ambassador, thank you for being here.

I want to follow-up on something that Mr. Brady said earlier about your shop working with overseas markets to help us here in the United States, and I just want to put a mention that Governor Brown, our Governor in California, is leading an effort to recruit businesses for California in China, business for California in China, so our folks can do business in that country, and your work with California would be very, very important and very much appreciated.

I want to talk a minute about flowers, and you and I have a little history here. You know my concerns. In my district, I have the largest cut flower and greens farm in the country and we are being absolutely hammered by the cheaper Colombian imports, and as I say, we have talked about this before, and I want to know what you can do to help especially now with the trade agreement that was signed pertaining to Colombia.

Ambassador KIRK. Well, first of all, and I understand that on the programmatic side because USTR's primary responsibilities are negotiation, there is little we have there, but I commit we will continue to work with you and whether it is Transportation or others, to see if there isn't some vehicle that we can try to ensure the competitiveness of those California growers. And I very much appreciate your continued advocacy on this.

If I might just digress 1 minute, I would tell you at the meeting President Obama hosted with the national Governors on Monday,

almost singularly one area of cooperation with the Governors and administration was in our need to do more in exporting. If I could draw the Committee's attention, Mr. Chairman, we have launched two important initiatives. One in terms of every state is trying to get foreign investment, but through Commerce there is a great new program called Select USA. We are trying to make it easier to draw in foreign investment, but particularly the biggest concern we have heard from small business is the confusion of where we start, and last week we launched a new tool called Business.USA.org, where the idea was to have one single point of entry, particularly for small businesses, to try to understand all the tools that we have available.

Mr. THOMPSON. Thank you. And I appreciate the help on the cut flowers. The transportation issue is an important one. It would be critical to supporting California business.

Capcom is a company in the Bay area. It started there about 1985. They do videogames. They employ hundreds of American workers. The owner of that company is a constituent of mine and they are having a real tough time with counterfeiting going on in China and they have abandoned all of their efforts to fight this piracy problem because they found out that the company that is stealing their software has close ties with China's Cultural Ministry. So I am hoping that the Trade Enforcement Committee will be able to intercede and help out, notwithstanding the association that these pirates have with foreign governments.

Ambassador KIRK. First of all, we would be happy to learn more about that, but I would say again, one of the key asks that we had at least year's JCCT was we wanted China to institutionalize at the highest level a governmental entity to deal with piracy and counterfeiting. They have agreed to do that.

Secondly, one of the reports that we present to you every year is our 301 report on other countries' compliance with intellectual property rights. For the first time, last year in February we submitted to you what we called a notorious markets report identifying specifically the worst of those actors. It was a small step, but because of that, we were able to get China to shut down one of their worst sites for piracy, the Baidu website. But I understand the frustration of that small business and—

Mr. THOMPSON. Thank you.

Ambassador KIRK.—we will continue to watch that.

Mr. THOMPSON. And then, as you know, the solar manufacturers filed an anti-dumping illegal subsidies case against China and what is happening in regard to our solar panels here in this country is costing us greatly in jobs. Do you have any update on the status of that claim?

Ambassador KIRK. As you know, the ITC, I believe, accepted the case. It is now going through the investigatory period with the Department of Commerce and we have to stay separate from that. But the one thing I love about our job is we try to hear from everyone. You should know there is a huge divergence of thought among the solar industry on this because we are—and we absolutely don't want to yield to the issue of China dumping—but the United States also enjoys a huge surplus because we produce most of the components and the more technologically advanced components and we

have a very healthy surplus. But we will wait to see what the judgment is from the Department of Commerce.

Mr. THOMPSON. Thank you.

And, Mr. Chairman, I think it is important to note that Allen Edmonds still making shoes in Wisconsin, one of the greater companies around.

Chairman CAMP. Note that the footwear for much of our military is made in Big Rapids, Michigan as well.

So Mr. Roskam is recognized.

Mr. ROSKAM. Thank you, Mr. Chairman. Thank you, Ambassador.

Ambassador, I represent suburban Chicago and we have had a very positive exchange with your staff, who has been incredibly helpful. What I want to do is just highlight for you an issue. You and I had a conversation about this last year. Let me just read you a few paragraphs, kind of a short, encapsulated summary, and then I have a specific ask at the end.

In suburban Chicago, there is a company called Fellows Manufacturing. These are the folks behind the bankers' boxes and shredding machines and so forth, a stellar reputation, 550 Illinois employees, and in a nutshell, they entered into a joint venture in China in 2006, which went well for 3 year, and then in 2009, it just devolved into a nightmare. The nightmare now has involved theft of their property. They have been locked out and they have lost tools and it has been dramatic to say the least. They have now been involved in a Chinese court to try and seek justice, and over the past year, it has become, you know, increasingly murky. And your staff has, again, been really helpful on this.

My question is would you be willing to raise this? You know how this works. If the trade ambassador raises it, it has the imprimatur and you are able to move the ball significantly based on your personal attention, and so I just wanted to ask if you would be willing to raise this issue with the Chinese Ministry of Commerce?

It is also my understanding that you are going to be dispatching a delegation on intellectual property issues next month and there may be an opportunity there as well, but, again, your staff has been incredibly helpful and I just wanted to make a personal appeal.

Ambassador KIRK. First of all, Congressman, thank you for bringing this to our attention. We have worked with you and not only will we raise it and have I raised it, but this was also one of the issues raised both at the Vice Presidential level and at the Presidential level.

We are more than concerned and alarmed over the rise in trade secrets theft and—it is a tragedy. We are hearing it from small companies like Felloes, and larger companies as well, and I guess the only change since last year is for the first time it has gotten rampant enough that the companies have now gotten more engaged than many were before because they have realized they have nothing to lose. But we will continue to work with you on that.

Mr. ROSKAM. Thank you, Ambassador. I yield back.

Chairman CAMP. Thank you.

Mr. Gerlach is recognized.

Mr. GERLACH. Thank you, Mr. Chairman. Mr. Ambassador, thank you for joining us today.

I have two local companies in my area that have raised a couple issues and I would like to ask you about that. The one I will simply end by just sending you a letter, if you don't mind, and if you could review it and respond, that would be much appreciated.

Ambassador KIRK. Yes, sir.

Mr. GERLACH. The other issue involves the issue of reinsurance in Brazil. I have a local company who has found an opportunity to do some reinsurance business down there, but apparently recently the Brazilian government has passed two resolutions, 224 and 225, that prohibit local insurers from associating themselves, in essence, with other companies from other countries and in essence trying to create a monopoly for those companies in that country on the reinsurance market.

I know you are aware of the issue. Can you update us on the status of what your office might be able to do to encourage the Brazilian government to relook at its policy to create this monopoly situation that is uncompetitive for our companies here in the United States? And with the fact that the Brazilian President will be visiting in the not too distant future, might that not be a good opportunity at some point to raise this issue with he and his government officials to discuss it?

Ambassador KIRK. Congressman, to prove I can be somewhat brief, I would say yours is both a question and an answer, and I would only correct you to say the president is not a he, but a she. It is—

Mr. GERLACH. Oh, I'm sorry.

Ambassador KIRK.—President Rousseff. No, no, no. We are exceptionally frustrated, I will be honest, with Brazil's market. But I would also tell you that that is part of the rationale behind President Obama's decision last year to make Brazil, Chile, and El Salvador his first foreign trip. We see enormous opportunities to expand our trade relationship within the hemisphere and we are hopeful that President Rousseff's reciprocal visit perhaps might be the impetus to being to loosen up some of these opportunities.

And we applaud Brazil's growth. They had this extraordinary find in terms of energy. We are, frankly, hopeful that the challenge of reaping the benefits of this new energy opportunity, and hosting both the World Cup and the Olympics, perhaps might overwhelm Brazil enough that they would be welcoming of our assistance in some of these areas like services and insurance.

Mr. GERLACH. Okay. Thank you for that.

And, as I say, the other issue involves a CAFTA issue involving a company in my area that is one of the largest retailers of school uniforms and there is this yarn forward issue that is affecting their ability to continue to do business. So I, if you don't mind, will send you a letter on that and if you could review and respond, it would be appreciated.

Ambassador KIRK. We will.

Mr. GERLACH. Okay. Thank you.

Chairman CAMP. Thank you.

Mr. GERLACH. Thank you, Chairman.

Chairman CAMP. Mr. Blumenauer is recognized.

Mr. BLUMENAUER. Thank you, Mr. Chairman. Thank you, Mr. Secretary, for being here. We appreciate your patience, and you have had expressed around the table, virtually all of us are interconnected with this global economy.

I have two things that I will follow with you in terms of letter. I don't want to take you unawares, but I want to put them on as part of the record, a follow-up. And then one that I would like to engage you in further discussion.

One, just reference to the footwear, I come from the Pacific Northwest. I have people in my district who manufacture footwear in the United States, but you will be receiving a letter that is circulated by Mr. Shock and me about this issue that deals with being serious about the tariff approach because the value of the footwear industry is here in the United States where the manufacturing, the design, the product—a lot of the manufacturing that comes here that is done domestically comes from a product that is imported to the United States and duty free. This is distorted. It is not good long-term business for the United States. So I would like you to look at this letter signed by other Members.

The other letter that I will give you deals with the Peru free trade agreement. I spent a lot of time in working on the environmental and labor provisions so that we could have something that would be bipartisan, that would speak to concerns we have all heard at home, and particularly as it relates to Peru and illegal logging. Having spent so much time on that, I am a little dismayed, frankly, at the lack of progress, and we have met with the Peruvian authorities. They have done a little bit. I will be sending you a letter that I would hope that you could give some attention to because we want the integrity of these environmental protections respected so it will make further progress in international trade easier for you and for Members of congress.

But the point that I would like to engage with you here in my remaining two and a half minutes or so, which I will turn over to you, speaks to what has happened with government procurement. You probably won't be here for testimony that will be delivered by Mr. Krzanich from Intel. Part of it speaks to this inequity. The brick countries are really not playing fair. They haven't been signatory to the GPA, and we are getting all sorts of unfair practices that are costing American technology in particular, but in a wide range of areas.

Frankly, this mystifies me. I think that if they are not going to play games, we ought to be much more aggressive in terms of our government policies toward their procurement activities here. This is not a two-way street. I find that outrageous and I am wondering if there isn't something we can do to push back unless and until they are signatories and they play by the rules.

Ambassador KIRK. First of all, Congressman, thank you for your cooperation with us on the other two issues. I will respond in writing, but I think you know we have continued to work with Peru to make sure that they understand that that Forestry Annex was real and it is in their interest and we are working and we will continue to.

On GPA, one, I would be interested, and maybe I will have one of my staff stay, because I agree with you. But the fundamental

premise of the government Procurement Agreement is if you aren't a Member of it, you don't get the benefits of it. So, frankly, I will be curious to hear what the gentleman from Intel says. But China, Russia, those countries that are not signatories to the government Procurement Act have no protection or no access to any of our access that we grant to other signatories.

Now, it is an issue that we continue to press China on because one of the commitments they made when we granted them permanent normal trade status is they would join the government Procurement Agreement. They have tabled an offer that we think falls far short of what we need, but they have not yet—

Mr. BLUMENAUER. Right, but there are examples of Chinese contracts in the United States that use some government funding that, frankly—I mean we have—the bridge in—building the Bay Bridge, \$400 million of Chinese steel, and frankly a screwed up job. It was defective. It ended up costing more in the long run, but our being more aggressive about where they are beneficiaries of money either directly or indirectly that is taxpayer money, that we turn this spigot back unless and until they play by the rules for our companies.

Ambassador KIRK. Well, I don't disagree with your premise. I would love to know what those specific cases are so we can—

Chairman CAMP. Okay. Thank you. Time is expired.

Mr. Paulson is recognized.

Mr. PAULSON. Thank you, Mr. Chairman, and thank you, Mr. Ambassador, for being here today.

You made some comments earlier about the working relationship we have with the EU and the high level working group I think you said that has been appointed to that and I appreciate those comments. That is the largest commercial relationship by far that exists and I would like to stay engaged on this issue as well and make sure we are able to maximize the potential in that transatlantic economic relationship.

I also wanted to ask this, is that I know last June there was several technology companies, many that have roots to Minnesota actually, Best Buy, Honeywell, 3M, as well as U.S. Chamber and the Retail Industry Leaders Association, Entertainment Software Association, they filed comments with the USTR in strong support of your proposal to update the Information Technology Agreement, ITA, with the WTO, and I understand it has not been updated since 1996. So it does not include connected devices with Internet or Wi-Fi capability, like Smartphones, televisions, e-readers, et cetera, and these are hugely popular items and they are growing with consumers, and so if this agreement were updated, it would absolutely help lower duties and reduce costs for consumers.

Can you just update me and the Committee where USTR stands with the WTO and the efforts to get this IT updated and what can the Committee, what can congress do to help disagreement kind of move forward and help reflect modern technological advances and developments?

Ambassador KIRK. Well, thank you, Congressman, and one, I cannot tell you the value to our negotiators of what this congress did in a bipartisan way and the message you sent last fall in passing all of our trade agreements because, people in Geneva that

frankly wanted to hide behind other things questioned our political will. There is more we can do, but, one, you just sent a strong message. As I told them, "You give us a good deal and our congress will move on it, but there is never a time to take a bad deal".

Now, I will say that one of the things all of you asked me was for an assurance that we wouldn't just sign an agreement out of deal fatigue if we didn't get the right deal. Because we insisted we have a more honest approach than that. The good news is we now have a little more latitude, frankly, to look at other ways we can liberalize trade. One of the opportunities a number of countries, including the U.S., has embraced is a more honest discussion about modernizing the ITA.

Perhaps I can follow-up so I don't take up more time, but we are working collaboratively with a number of countries that are interested in this initiative and you correctly note, this is one that our industry is wildly supportive of and so we will continue to work with you and industry to see whether we achieved this both in product coverage or others, but it is something we are very supportive of.

Mr. PAULSON. Yes, I appreciate that. I would absolutely like to try and help you with it and help in any way possible.

Let me follow-up too because you made some comments earlier about the biopharmaceutical and medical technology industries and that is obviously critical to the future of our economy right here in America, and these are industries that do support very good, very high paying jobs. They depend on the strong intellectual property rights and the innovation that created the industry, especially in the areas of drugs and devices, the research and development, and it comes from our workers here. And it is these strong IPR protections, including data protection, that make it commercially sustainable for these biopharmaceutical firms to invest so substantially.

Do you agree in general that to encourage American innovation in this sector, that we need to help and make sure we are pressing for the same high standards and IPR protections in the TPP countries that are part of that structure going forward so we can move forward with keeping the R&D here and protecting that IPR?

Ambassador KIRK. Absolutely. Yes, sir.

Mr. PAULSON. Good. Well, I appreciate that.

Mr. Chairman, I yield back.

Chairman CAMP. Thank you.

Mr. Marchant is recognized.

Mr. MARCHANT. Thank you, Mr. Chairman.

Ambassador, as you know, my district includes the Dallas-Fort Worth Airport and Los Colinas. So you know how important trade is to my district and our region and we are privileged to have someone that is so familiar with that area as trade representative.

We have just passed the Colombian and Panama trade agreements and some people are suspecting that both the administration and congress is going to rest on their laurels now and not pursue any kind of additional trade agreements in South America. I think in April there is a summit that is hosted by Colombia, a lot of American states down there. Do you anticipate going—having representation at that gathering and do you anticipate opening discussions about new trade agreements in South America?

Ambassador KIRK. Absolutely. And thank you, Congressman. Your hometown is blessed to have a really young, dynamic Mayor that I think is going to have a great career as well.

Kenny, as you know, we don't want to lapse in too much of our Texas pride. No state benefits from exporting more than Texas. We are the number one exporter and we have been. It is important to note that in addition to Panama and Colombia, our largest trading partners are still Mexico and Canada. A lot of the benefits are to our region, but we aren't going to rest.

Two of the countries critical to moving the Trans-Pacific Partnership forward, for example, are Chile and Peru. We have a trade agreement with Chile, but I will be joining the President for the Summit of the Americas, and again, part of President Obama's deliberate decision to go to South America first last year was to begin to try to set new dynamics for increased trade relations between us and our partners in South America and the Caribbean.

Mr. MARCHANT. And on a second note, just recently I had the opportunity to visit troops in Afghanistan and we had an opportunity to stop in Pakistan and I can tell you that they had a major emphasis that both the prime minister, the president, and the parliamentary members, their emphasis was on trade and could I ask you what the trade—as trade representative, what is being done in—as far as you said you are going to India, but what is being done in Central Asia, Pakistan specifically, in opening up trade relations?

Ambassador KIRK. Congressman, thank you so much for raising this because it hadn't gotten as much attention. One of our more important initiatives that I referenced in my opening remarks is what we can do to help stabilize this region, not just in Pakistan. Pakistan, we would very much welcome their coming back to the table and frankly, that is one of the countries we could conclude a BIT with, for example, pretty quickly, but we have a broader initiative that we call MENATIP. It is the Middle East North African Trade and Investment Partnership. Recognizing one of our real challenges, whether it is in Egypt or Libya and others, we applaud this Arab Spring, but as you know, one of the challenges for their leaders is to show this dividend of democracy. We think we can be a partner with them, but we are having to tread very carefully so that this is seen as something that they embrace and initiate. So we have had teams recently in Egypt. We have gone to other trade partners in Jordan and Bahrain, to see how we can work collaboratively, because in many cases, they are constrained because of barriers among one another.

So we are doing everything we can to work with them both bilaterally, but also pluralaterally to grow the seeds for increased trade and investment throughout the region.

Mr. MARCHANT. Well, the central message from their parliamentary leaders was that an escalation in trade talks would significantly help in deescalating the tensions between Pakistan and our country over there. So—

Ambassador KIRK. As you know, we have heard not just from them, but you have heard it from Secretary Gates and our military leaders, countries that generally find a way to do business together

and find a common future in trade are less likely to go to war with one another.

Mr. MARCHANT. The prime minister's message primarily was trade not aid. So thank you very much.

Chairman CAMP. Thank you.

Mr. Berg is recognized.

Mr. BERG. Thank you, Mr. Chairman. Thank you, Ambassador Kirk.

I wanted to talk a little bit about Russia and where we are going there, and, you know, probably the first question I have is a lot of our tariffs are relatively low right now, and so if we don't really change any of our agreements with Russia, you know, what would be the negative impact, the status quo, on business, on labor, on agriculture?

Ambassador KIRK. Well, first of all, thank you, Congressman.

If we were to grant Russia, which I hope we will, permanent normal trade status and lift the Jackson-Vanik restrictions, the good thing is not one thing is required from the United States. We don't have to lower our tariffs. We don't have to change any of our laws. This is decidedly about whether American businesses, farmers, small businesses, will reap the benefits of, frankly, all of the efforts that Russia will undertake to, in many cases, lower their tariffs, open up their service markets, begin to conform to sanitary and phytosanitary standards. And I want to make it plain. I know there are very legitimate, strong concerns on other issues, but the simple fact is our extending permanent normal trade relation status to Russia is singularly in our interest.

Now, we do have a bilateral trade framework agreement, that dates back to 1992. But for us to reap the real benefits and not be put at a competitive advantage, I can't make it any plainer than the Chairman did in his remarks. This is singularly in our commercial interest to do this.

Mr. BERG. What would be the big benefits for our economy if we did take those steps, both repealing of the Jackson-Vanik, as well as a permanent normal trade relations?

Ambassador KIRK. Well, I mean, Russia is the largest economy of the world not in a rules-based trading system. We have a number of U.S. companies and interests in the Baltics and the region, but Russia can be, you know, the launching pad for further integration there. It gives us protection we don't have now. For example, if we have businesses there and they are experiencing challenges, you know, we can talk about it, but we don't have a lot of tools to move it.

We think there are a lot of offensive categories, and I can't believe—you know, even though I'm from Texas, I really am a city boy—but I can't believe the whole time I spent about talking about agriculture. This is a huge market for us for pork and for grain, for those industries. In terms of manufactured goods, the automotive industry, aircrafts, technology—with all of the opportunities for joint venturing in energy exploration. These are great immediate opportunities we could reap, but, again, if Jackson-Vanik stays in place, our exporters, our businesses are going to be competing with one hand behind their back because we won't get that tariff benefit differential through the WTO.

Mr. BERG. I can clearly see your passion on this, so I guess the question is what—you know, what are you—what is the administration doing to move this forward? I mean I see it is number three on your list here. What are—

Ambassador KIRK. Well, as you know, we have begun to engage Congress on the need to do this and we will work with the leadership of this Committee and the Senate Finance Committee in particular on the appropriate time and vehicle to bring this up. But we have been very plain and I stated this in my remarks last year. This is something collaboratively we need to work to achieve.

Mr. BERG. Has the President came out with a statement supporting the repeal and supporting the permanent relations?

Ambassador KIRK. Yes, he did. In fact, I think the President referenced it in his State of the Union Address.

Mr. BERG. Okay. Then from the administration standpoint, is there anything else that you are planning to do or can do to help remove some of the political barriers to taking this a step forward?

Ambassador KIRK. Well, we have engaged the business community. Again, we have begun to discuss this issue with members. Again, there are other issues, Members legitimately concerned, again, but we have done everything we can to try to socialize the issue so that—look, many—those of us who—and I hate being one of those old enough to remember the debate about granting China PNTR. I mean, these are very, very difficult decisions, but we are trying to create the right environment. We can have it in a dispassionate way as possible and hopefully work with the leadership to get an affirmative vote.

Mr. BERG. If there is things that leadership feels would be helpful the administration to do to this move forward, you are willing to help in that manner however it goes?

Ambassador KIRK. Absolutely.

Mr. BERG. Okay. All right. Thank you.

I yield back.

Chairman CAMP. Thank you.

Ms. Black is recognized.

Ms. BLACK. Thank you, Mr. Chairman, and again, Ambassador, thank you so much for being here with us. We always learn so much with these dialogs.

As you know, the United States has long enjoyed a large service trade surplus and U.S. services firms are global leaders across many service sectors, especially, for example, business services like banking and insurance and so on. The average wage in these business services is substantially higher than in the manufacturing service. These are good jobs, and the business service sector alone dwarfs the entire manufacturing sector.

Promoting more U.S. service exports will be important on an ongoing source of well-paid U.S. jobs, and that is, of course, something we are all looking forward to make sure that we have more U.S. jobs and especially those high paying jobs, and yet the President's National Export Initiative that is led by commerce appears to focus principally on manufacturing exports.

What are you doing to ensure that the administration's export promotion initiative is seizing the opportunity that we have to generate good U.S. jobs by expanding our services exports?

Ambassador KIRK. Well, thank you for your question and let me at least try to—not necessarily disagree with you, but assure you that we are as aware of the importance of the service industry to our economy and our exports as you. It is absolutely an integral part of our National Export Initiative. We had a meeting of the President's Export Council and trade policy coordinating group yesterday. We spent a large part of our time looking at opportunities to further expand the service industry.

Our services exports are up about 21 percent since we started the Export Initiative. Many of our services, frankly, support the manufacturing industry. It is a place that we believe, frankly, that the numbers that we use in terms of our ambition for Korea are understated because we don't capture services data as well as we do hard goods data, but, for example, in Korea, you heard even their president say, this is a half a trillion dollar services market. It is a huge opportunity for us. And particularly in our Trans-Pacific Partnership, we have engaged with the Service Industry Coalition and other groups on a number of opportunities to make sure we are addressing their concerns in an offensive way.

So it is something we embrace. It is an area that we have a surplus in just about every region in the world and we think it is a critical place America can help other economies meet their ambition while creating jobs here at home.

Ms. BLACK. I hear you saying that you are engaging. Can you give me anything more specific in what you are doing in order to help promote the service industry?

Ambassador KIRK. Not that they are the only group, but one of the strongest resources we have is the Service Industries Coalition, for example. We have worked with them to hold seminars for other countries, frankly, on how partnering with the United States where, frankly, we have resources and competencies that they may not, is not a threat to them, but it is a way we can jointly help them achieve some of their broad ambitions.

Our WTO ambassador, Ambassador Michael Punke, for example, met with the Service Industries Coalition yesterday to talk both about some practical things we can seek, the opportunity we have now in Geneva to expand trade and services, as well as some ideas that we can incorporate into our Trans-Pacific Partnership.

Ms. BLACK. And I appreciate what you are saying. I guess I am just not hearing from you anything specifically that you—

Ambassador KIRK. Within the Trans-Pacific Partnership, we are specifically tailoring chapters that will expand and promote non-discriminatory access—

Ms. BLACK. Okay.

Ambassador KIRK [continuing]. To our services markets.

Ms. BLACK. Okay.

Ambassador KIRK. I mean I am sorry if I did not make that clear.

Ms. BLACK. Okay. Well, I appreciate that, and again, you know, jobs, jobs, jobs are so important for us here in the United States, but I think we have to be very aware that as things are different than they were years ago, and that this is an industry where it is good paying jobs and I don't want us to overlook that, and obviously manufacturing is important too, but as we move on in this

new age of where jobs are seen as the jobs that are the future jobs with high paying, I want to be sure that we are making sure we are staying where we need to be in that industry.

Thank you.

Ambassador KIRK. Yes, ma'am.

Chairman CAMP. Thank you.

Mr. Reed is recognized.

Mr. REED. Thank you, Mr. Chairman, and thank you, Mr. Ambassador. Just wanted to echo the sentiment from my colleagues, just applaud your efforts in your office and the recent success with Korea, Colombia, Panama. We did a lot of work trying to advance that cause and I just so appreciate all the efforts that you have done there.

And so I wanted to go back to our future trade agenda and in particular Russia and the focus on Russia and bringing them as they move into the potential WTO establishment, and what I am concerned about is I am all about free trade, but it has to be free, fair trade, and specifically as part of Russia's accession into the WTO had agreed to concessions to open its market, such as reducing its export tariffs; however, recently the Russian Government has taken administrative actions that would undermine these export concessions. For example, a draft decree would cut off exports of metals, such as tin, magnesium, and titanium, just to name a few, key materials used by the steel industry and other manufacturers in my district from selected Russian ports. I believe that was issued in December/January of this year.

And I was wondering if you are aware of that action by the Russian Government and what your thoughts on that would be, and also your assurances or concerns, if any, about Russia complying with the potential WTO requirements.

Ambassador KIRK. Congressman, first of all, we are aware of it. We are troubled by it. I hope I don't sound repetitive or redundant, but it is precisely again one of the reasons that we need to bring Russia fully into the WTO and the United States' exporters ought to have that protection. Right now if we don't lift Jackson-Vanik and grant them PNTR, you and I can talk about it and shake our heads, but I don't have the ability to take them to the WTO, as I did China. Just last week, since you mentioned raw materials, the very first case we filed in 2009 was a case in the WTO that challenged China's restraints on raw materials that are critical to the steel industry and this was a case where, you know, not just the United Steelworkers, but, you know, U.S. Steel Company and others had come to us and said, "This is harmful to us." We acted on it and we got a ruling from the WTO that validated our concerns almost 100 percent.

Having that in hand, that would greatly enable us to then challenge Russia in a more formal way if we can't get them to redraw these export restraints by dialog, but I would go back—it absolutely makes the case why we would be benefited by having full access to all of Russia's inclusion in the World Trade Organization, including dispute settlement.

Mr. REED. Well, I so appreciate that, and I so appreciate what you did with the China situation and also the rare earth and the aggressive nature and I applaud you on that effort.

And so what I am hearing is that if we get Russia to the WTO in full PNTR status, that you would give me the assurance that if this type of behavior or these type of government decrees occur in the future, that we will vigorously go after those potential situations. Do I have that assurance from you, Mr. Ambassador.

Ambassador KIRK. Yes, you do.

Mr. REED. All right. Thank you so much.

With that, I yield back, Mr. Chairman.

Chairman CAMP. Thank you.

Dr. Price is recognized.

Dr. PRICE. Thank you, Mr. Chair. Mr. Ambassador, I want to thank you for your service and also for your patience today. You have been here for a good long time.

I want to ask just a couple of very specific questions. The first is on state-owned enterprises. I think that Japan's interest in the TPP creates an opportunity to address a number of barriers to U.S. exports and investment. Issues such as Japan Post remind us the market dangers of government provided benefits in state-owned enterprises because then they create an unlevel playing field in those countries. You have heard others talk about the state-owned enterprises and the problems and challenges in China.

What are your thoughts on discouraging the proliferation of market impacting state-owned enterprises among those countries with which we hope to expand our trade, with specific attention to Japan?

Ambassador KIRK. Well, first of all, we share your concerns about the presence of state-owned enterprises wherever they are and I am happy to follow-up with you directly, Congressman, but it is precisely the reason in the Trans-Pacific Partnership negotiations that we are tabling for the first time a chapter that would deal with the disciplines of state-owned enterprises. We have learned from some of the lessons that we had with respect, say, to China and others and we have consulted with business and with Members of Congress and at least are insisting that we be knowledgeable and thoughtful about that and address that.

With respect to Japan Post, this is an issue we have challenged Japan regularly since we have been in. I have visited with a number of our insurers. This is an important market. You may or may not know AFLAC, for example, I think some 75 percent of their revenue comes from Japan. You know, thus far, fortunately because of their own politics, they have not moved on that. But we have not yielded in insisting that if they are going to open that market up and they are going to allow a state-owned entity to compete, it has to be on market terms and nondiscriminatory terms and we will continue to insist on that.

Dr. PRICE. And I hear that, the market terms again, and you mentioned earlier that—the two items, transparency and market principles. We would suggest that it is virtually impossible to have market principles work with state-owned enterprises, so—and I would urge you to be very, very challenging to those countries that want to make it so there isn't a level playing field.

One other issue I want to talk about, in Georgia we are increasingly concerned and remarkably frustrated by India's position to deny access to U.S. poultry into their Indian market, a market with

really great potential, and although they use a variety of excuses and trade barriers to prohibit the importation of U.S. poultry, the one that they keep coming back to is a concern about viral disease, avian influenza, and although it sounds foreboding, there is no scientific basis for their concern.

So I wonder what the administration has done to convey the use—their concern about the use of such non-scientifically based measures to prevent trade that is clearly inconsistent with the WTO, and if this continues, does the administration plan to seek to enforce our rights under the WTO?

Ambassador KIRK. We are extraordinarily frustrated with India's continued non-application of internationally recognized scientific standards. Our American poultry, it is safe. There is no reason for them to deny us access. We have raised this at every opportunity we have engaged India, including past trade policy forums. We would continue. We have continued to press them. It is our practice, though, not to publicly state whether or when we will take legal action within the WTO.

Dr. PRICE. Is it fair to say that that still remains an option that the administration is considering?

Ambassador KIRK. It is certainly an option that is on the table. I think you could examine our actions in China on similar cases and others to perhaps lead you to the conclusion that you want to draw.

Dr. PRICE. And I appreciate that. We would encourage the administration to move with dispatch. This has been a long, ongoing battle and one, again, for which there is no scientific evidence. Thank you so much.

I yield back.

Chairman CAMP. Well, thank you, and thank you, Mr. Ambassador, and thank you for being here for allowing all Members who wish to ask questions the chance to be able to do that.

Senator Baucus and I wrote you and Secretary Geithner in January and we did receive a response regarding China's currency and their exchange rate policies and particularly with regard to the upcoming seminar and the World Trade Organization. I want to thank you for the response to that letter, and without objection, I would like to enter both letters into the record and just tell you again how much I appreciate all of your efforts and your testimony here today and also want to acknowledge Luis Jimenez, who I understand is leaving your operation and going to be heading over to the White House. So we expect to see him frequently in his capacity in Legislative Affairs there, and I know that Mr. Levin would also like to make a comment.

[The insert of The Honorable Dave Camp #1 follows:]

[The insert of The Honorable Dave Camp #2 follows:]

Mr. LEVIN. Well, Mr. Ambassador, we really appreciated all of your testimony and your expertise, and if I might just say a word to your pal Luis. As you know, he has worked incessantly on these issues and has represented you and USTR and the administration so well. And Luis, we wish you well. As the Chairman said, we won't say so long since we will be seeing you very often.

Mr. JIMENEZ. Thank you.

Chairman CAMP. Again, thank you very much, sir.

Ambassador KIRK. Thank you.

Chairman CAMP. And now I would like to turn to our second panel.

We have with us today Mr. Tim Harris, President of Harris & Ford, Mr. Brian Krzanich, Chief Operating Officer of Intel Corp., Mr. James H. Quigley, Senior Partner, Deloitte & Touche, and Mr. Alan Wolff, Of Counsel, Dewey & LeBoeuf.

I've asked these witnesses to take the long view today, specifically with respect to new negotiations and already today we have addressed our relationship with China and Russia, the TPP negotiations, and the need for strong enforcement.

At this point, I would like to discuss what steps we should be taking in undertaking new negotiations to best position the United States and I welcome our panel.

Mr. BRADY. Well, I want to join with Chairman Camp and thank our witnesses for being here today and again looking at the long view specifically with respect to new negotiations and we reserve 5 minutes for each of the testimony.

So, Mr. Harris, I yield to you. Thank you for being here today.

Mr. HARRIS. To Chairman Camp and Ranking Member Levin and Members of the Committee, I am Tim Harris, cofounder of Harris & Ford, a distributor based in Indianapolis, Indiana, and again, I thank you for this opportunity to allow me to present our views on U.S. trade policy.

When I look at Harris & Ford, Harris & Ford we are, again, a distributor. We focus in food, pharmaceutical, cosmetics, and the industrial marketplace. We started out on two empty paint pails that the painters left behind, didn't really have money for furniture or anything else, and I remember walking in, seeing those two empty paint pails and I said to my partner, Joe Ford, I said, "Man, thank God we got furniture," and he said, "Where do you see furniture?" And I said, "Man, where I came from, Joe, that is furniture."

When we started out, we didn't have very much. We had an idea. We had experiences, but companies like Procter & Gamble opened up their doors and allowed Harris & Ford to distribute their products, yet and still most companies, both suppliers and customers, were reducing their distributor base. So what we had to do, we had to create a niche. We had to find a way into the marketplace and the way that we did that was we created what we called a consolidation model. Did it first with Pillsbury where we were able to go into plants and they eliminate 210 suppliers in favor of Harris & Ford. I should say consolidate those.

We went from distributing products in the U.S. to traveling abroad with, again, multibillion dollar companies of the likes of Coca-Cola, traveled to China and begin to import products like saccharine sweeteners, ascorbic acid, of course vitamin C, citric acid, and other products that were used as preservatives for primarily food and cosmetics.

As time went on, we seen that our customer base, a lot of their growth market was overseas or offshore to India, to China, to South Africa, to Europe, et cetera, and what we did, we went from having our model that we used just domestically to employing that internationally.

Let me just say to you right now, Harris & Ford went from sitting on those two empty paint pails with zero customers and now Harris & Ford is about a \$200 million distributor. Harris & Ford sells to North America, Central America, Western Europe, Asia, as well as the Middle East. There are 27 countries that we export product to, 18 companies that we import product from.

When I look at Harris & Ford, and again trying to be very concise here, and I think about the U.S. trade policies, countries where it is easy to work in, countries where it is difficult for us to work in, there is three points that I would like to leave with the Ways and Means Committee here. First of all, in the countries where you set the rules of engagement, where the rules are like the U.S. rules, like Mexico, like Canada, it is easy for us to do business in those countries, much more difficult in countries like Brazil, Argentina, and China, Saudi Arabia. So one thing we are asking that you set the rules of the road.

Secondly, I want you to understand that we are just one link in the supply chain and when you help our customers win, the Krafts, the Procter & Gambles, the Coca-Colas, if business is easy for them to do offshore, it makes it easy for us to do business with them as well.

Third, and final, I would like to say again that a lot of companies that export are the same companies that import. I heard Representative Kirk express some concerns about China pirating. I heard some concerns about assets being taken from U.S. companies over in China. And it is much easier if we work with a company like Procter & Gamble that carries us there with them and do business with them. It is much easier. It is much safer.

So, again, I would like you to consider the statements that I made and I thank you for your time.

Chairman CAMP. Thank you, sir. Your full statement will be put in the record.

Mr. HARRIS. Thank you.

[The prepared statement of Mr. Harris follows:]

**Testimony of Mr. Tim Harris
President and Co-Founder
Harris & Ford, LLC
Indianapolis, Indiana**

**U.S. House of Representatives
Committee on Ways & Means**

Hearing on the Future of U.S. Trade Negotiations

**Wednesday, February 29, 2012
1100 Longworth House Office Building
Washington, DC**

Chairman Camp, Ranking Member Levin, and Members of the Committee:

I am Tim Harris, President and Co-Founder of Harris & Ford LLC, based in Indianapolis, Indiana. Thank you for the opportunity to present our views on U.S. trade policy. This is a critical topic for economic growth and American competitiveness. A strong, forward-looking trade policy which helps companies “work with the world” is central to the success of small businesses like Harris & Ford. Our company and many others like us would benefit from a U.S. trade agenda that is as ambitious as we are.

About Harris & Ford, LLC:

Harris & Ford was established in 1994 by my partners Joe Ford, Chris LaMothe, and me. Our business is acquiring and distributing chemicals, ingredients and related products and services for food, cosmetics, pharmaceutical, consumer product and industrial customers. Harris & Ford employs about 50 people at our facility in Indianapolis. Our annual revenue is approaching \$200 million per year.

Our business had an unforgettable start. I recall vividly our first day of business when we were sitting on two used paint pails that the painters left behind in our first empty warehouse. These pails were all the furniture that we had. When I first saw the pails, I said, “Thank God, we’ve got furniture!” And my partner replied, “Harris, where do you see furniture?” I told him, “Joe, where I come from, that’s furniture.” For the first five months, we didn’t make a dime. I recall receiving eviction notices for three straight months from our mortgage holder. After much hard work as well as some luck, the tide turned.

When we started Harris & Ford, our target markets were already saturated with distributors and we found that manufacturers were strategically reducing their distributor base in a simplification effort. Potential customers said to us, “I already have a distributor. I’m covered.” No one was asking for, or welcoming in, our newly established business. But we were blessed to carve out a niche in the marketplace - first domestically and now internationally.

We have always been the ‘new kids’ on the block, competing in mature and saturated markets against historically entrenched companies that had facilities within minutes of their customers’ locations. This was the way business was always done, and yet we found this to be outmoded, which opened the door for us to make a difference. Before General Mills purchased Pillsbury, Harris & Ford and Pillsbury jointly developed what we deemed as our “Pillsbury Model” which was a logistics consolidation model.

Finding Our Niche in Logistics Consolidation:

We found that most customers had no real handle on their total delivered costs of their raw materials. They would erroneously switch suppliers over a penny on the bid price for the raw material, but end up paying an additional eight cents per pound for freight because they didn’t have the resources or expertise to fully understand and optimize their delivered cost. This was our opportunity and where we excelled.

Let me provide to you a domestic example of what we did to create value and ultimately develop the foundation of our logistics consolidation business model. One of our customers purchased 2,000 lbs. of FD&C colorants, 9,300 pounds of CMC, 1,000 pounds of salt, 7,300 lbs. of potassium sorbate, 8,640 pounds of vanilla flavor, and 14,000 pounds of sodium benzoate. The total quantity was 42,240 pounds at an average freight cost of \$0.0878 per pound when shipped separately. When the orders were consolidated through Harris & Ford, we could reduce the average freight cost to \$0.017 per pound. The annual savings we provided for our customer at their first plant was over \$35 thousand per year. This later turned into over \$2 million per year once we executed at that same customer's 59 plants.

Logistics consolidation has always been our foundation, but we have expanded to become a more well-rounded services provider to much larger, well established companies. Although Harris & Ford only has 50 employees and our cash flow is limited, we are very agile and operate under very low overhead costs. Our customers now not only turn to us for our domestic logistics expertise, but they are asking us to help manage their more complex overseas supply chains. Since we can dedicate the resources to focus on the logistics details and minimize their costs, we continue to find ways to provide increasing value to our customers.

Broadening the Business Model with International Markets:

Beginning in 2002, Harris & Ford started to venture into international markets. I traveled to China that year with one of the world's largest and most recognized global food and beverage companies. This was our chance to expand our logistics consolidation model internationally, by managing shipments to the U.S. from China. Although our expertise in international markets was low at that time, and the learning curve was huge, it was important to our customer for us to develop this know-how. Considering where we came from with paint pails as furniture, we were confident we could figure this out.

Harris & Ford is now managing imports from China, Germany, Japan, Taiwan, Belgium – 18 countries in total. Our excellence in import management has been a key to our continued business growth. We import and resell products like vitamin C, saccharin, benzoates, sorbates, sorbic acid, and citric acid. These products help companies like Kraft, Coca-Cola, PepsiCo and Procter & Gamble manufacture their well-known branded products. We are proud to say that we have helped some very successful U.S. based multi-national companies to become even more successful. But our real pride is that the products that Harris & Ford has imported have ultimately reached and are consumed by over 95% of the households in the United States.

We realize that if we want to continue to grow our business, we need to continually adapt our services model to focus on our customers' evolving needs. Because our customers continue to grow their manufacturing and sales in international markets, we must also adapt our business model to support them on these new frontiers. We have done this by reapplying our logistics consolidation model to other countries in North America, Central America, Western Europe and even Asia. Our plan is to eventually establish service operations that can be more responsive to our customers' needs while being led and supported out of our Indianapolis headquarters.

The principles of our logistics consolidation model do not change because we are establishing on-the-ground operations in countries like Canada or China. On the contrary, the model remains the same but will someday, hopefully soon, become an international network of seamless integration where we can provide the highest service level to our customers globally.

Whereas earlier in our company's life cycle we began importing product from around the world, we now also export product to 27 countries - Argentina, Brazil, Canada, China, Colombia, France, Germany, Japan, India, Italy, Mexico, Netherlands, and Spain to name a few. We have established remote stocking locations outside of the United States in Puerto Rico, Canada, and England, and are in the process of developing our stocking location in China. From these locations, our Indianapolis logistics consolidation model can be reapplied.

Becoming a Better Services Provider:

Beyond the logistics consolidation model, Harris & Ford continues to find ways to provide increasing value to our customers. We are a basic company with simple solutions. We are not overly advanced or complex. We deliver results for our customers using our very talented workforce. Our customer service principles paramount and we operate under ethical behavior.

We have built such a reputation in the industry that large multi-national companies have now started to turn to us for assistance with their inventory management. So not only do we own the logistics between the sites, but we also own the inventory at the sites. We have a great understanding of our customers and their needs with regard to logistics. This continues to open new doors of opportunities in areas where we currently do not participate.

Although Harris & Ford does not currently manufacture anything, we have recently started to explore chemical toll processing at the request of our customers. We see toll processing as basic, but first step in Harris & Ford's pursuit of chemical manufacturing. If Harris & Ford can be successful in establishing a base-load of tolling customers, we can start to pursue this new branch of our business model. Because most of our customers have global operations, the options to grow through tolling operations appear boundless. Our plan is to develop a U.S. based tolling operation and export if requested. At some point, we would like to reapply our international logistics consolidation plan and establish tolling operations close to our customers in other regions.

The Future of U.S. Trade Policy

I am by no means an expert on trade policy. I'm simply a small business owner trying to grow my company. From my vantage point, however, there are a few key trade policy principles which I would like to state for your consideration.

First, American trade policy leadership matters to American companies. Harris & Ford exports to 27 international markets, and our experience is that we are more effective where the U.S. government has worked to establish the "rules of the road" for the trading relationship. For

instance, Mexico and Brazil are both growth markets for our company, but exporting to Mexico (thanks to the NAFTA) is far more straightforward and predictable. I recognize that elected officials have many pressures and priorities, but Harris & Ford would benefit from an international trade agenda that matches our level of ambition.

Second, let me make a comment about small business exporters. Mr. Chairman, it's an honor that your Committee would seek the views of a company like Harris & Ford, but the point is this: our small company is part of a larger supply network. A trade policy that makes the network more competitive helps everyone in the network, large or small. In other words, when U.S. government policy helps my customers (mainly large, globally-engaged firms) succeed in foreign markets, Harris & Ford grows right along with them.

Believe me, small firms always appreciate it when elected officials take the time to listen to our concerns. But, if I may, I suggest you not "over-analyze" the distinction between small and large companies. Help my customers win, and Harris & Ford will get along just fine.

Third, it's important not to lose sight of the fact that most US exporters are also importers. About one-third of the materials Harris & Ford purchases are imported to the U.S. When Congress lowers U.S. import tariffs, or streamlines customs administration, we are able to offer better value to our customers. For instance, Procter & Gamble purchases certain highly specialized chemicals, sometimes produced only one place in the world. Maintaining a U.S. import tariff on this product "protects" no U.S. industry, since there is no domestic source. The tariff only raises the price, which winds up being passed along to the consumer.

As an exporter, we appreciate the government's efforts to reduce foreign trade barriers, because it helps our competitiveness. But because we are also an importer, we think it's worthwhile for the Congress to examine our country's own trade barriers with the same goal of increasing the competitiveness of U.S. firms like ours.

Conclusion

Harris & Ford has come from sitting on paint pails in a vacant warehouse to managing imports from 18 countries and exports to 27 countries. We're confident we can continue to grow in markets outside the U.S. Because our customers work with the world, providing service in global markets is a core priority for us. Thank you very much for your time.

**STATEMENT OF BRIAN KRZANICH, SENIOR VICE PRESIDENT
AND CHIEF OPERATING OFFICER, INTEL CORPORATION**

Mr. KRZANICH. Thank you, Congressman Brady, Members of the Committee. I appreciate the opportunity to appear here before you today and discuss the future U.S. trade policy.

Intel is a Fortune 50 company, a leading manufacturer of computer communications and networking products. We have approximately 100,000 employees worldwide, with more than half of those in the U.S.

Even during strained economic climate, Intel has continued to invest in the U.S. to stimulate economic and job growth.

Since 2009, the company has announced plans to build two new factories in Oregon and in Arizona, and update its existing manufacturing facilities in those two states and in New Mexico.

These projects required an investment of between \$18 and \$20 billion and are underway currently.

When we complete these projects, we will have created more than 15,000 construction jobs, and we will have created and maintained thousands of permanent jobs, all of which are sustained by overseas sales of our products. Trade is important to us.

While Intel manufactures three-quarters of its products in the U.S., it generates more than three-quarters of its revenue from overseas.

Our ability to export and sell to 95 percent of the world's consumers living outside the U.S. has led to record earnings during these turbulent times.

In fact, microprocessors have been the leading U.S. export when averaged over the last 5 years. However, many U.S. industries, not just ours, are highly dependent on market access overseas to create and maintain domestic jobs.

Robust free trade agreements are essential to market access and continued growth.

I want to briefly make three points today in support of the need for the U.S. Government to pursue a more ambitious trade agenda. Each of these points is discussed in detail in our written submissions.

My first point is that existing trade agreements need to be expanded. Too many key markets are subject to too few existing trade rules. I have several brief examples.

The WTO information technology agreement or the ITA, has dramatically increased U.S. exports by eliminating Custom duties in many countries on a range of technology products that were in existence at the time it was negotiated.

Mexico, Brazil and several other notable countries are not ITA Members. They are not signatories of the ITA.

Many of the digital products developed in the last decade, such as multi-processors, video game consoles, DRAMs, are not covered by the ITA.

The Information Technology and Innovation Foundation estimates that the ITA expansion would increase direct U.S. exports by \$2.8 billion, boost U.S. revenues by over \$10 billion, and support an estimated 60,000 new jobs.

Intel strongly supports the administration's recent efforts to begin negotiations to expand Membership and product coverage on the now 16 year old agreement.

My second example, a more broad example, is the need to expand the existing agreements to pertain to government procurements, which we heard this morning limits companies on a significant share of the global economy.

Yet none of the BRIC countries are Members of the WTO government procurement agreements or the GPA, which prohibits discrimination against foreign suppliers. This has enabled China, India and Brazil to pursue measures designed to favor local suppliers, especially those in the electronic sector.

The U.S. Government needs to find a way to incentivize other large governments to join the GPA with similar transaction coverage.

The second major point I would like to make this morning is the U.S. Government must enter into additional robust trade agreements on an accelerated basis.

Trade flow data shows how important FTAs are to the U.S. economy. Trade agreements between the U.S. and 17 countries accounted for 41 percent of the U.S. exports in 2011, even though these countries represent only 7 percent of the world economy.

U.S. exports to every single FTA partner country have increased dramatically after these agreements were implemented. U.S. exports create and sustain U.S. jobs.

Robust FTAs open up new markets to our exports and reduce the cost of doing business overseas. We need more FTAs to create more U.S. jobs.

Yet the U.S. has not kept pace with other countries in opening new markets abroad, especially in the fast growing economies of Asia and Latin America, and they are now major engines of global growth.

As the global competitiveness increases, our pace to increase market access for U.S. goods and services needs to accelerate.

My third major point and my final one, the U.S. government must use a variety of mechanisms to tackle more complex non-tariff barriers.

Some governments are linking more traditional NTBs, such as local content measures, with new entities that promote discriminatory technology standards and favor domestic intellectual property rights, all with the objective of creating national manufacturing champions and increasing indigenous innovation.

Mr. BRADY. Mr. Krzanich, I apologize. Time has expired. I would like to come back to your points during the questioning, if I may. Thank you, sir, and welcome.

[The prepared statement of Mr. Krzanich follows:]



**PREPARED STATEMENT FOR THE RECORD OF
INTEL CORPORATION**

For the

**COMMITTEE ON WAYS AND MEANS
OF THE U.S. HOUSE OF REPRESENTATIVES**

On

**PRESIDENT OBAMA'S TRADE POLICY AGENDA
And
THE FUTURE OF U.S. TRADE NEGOTIATIONS**

February 29, 2012

Intel Corporation respectfully submits this testimony for the record in conjunction with the Committee's hearing on President Obama's trade policy agenda and the future of U.S. trade negotiations. Our testimony will focus on the importance of increasing market access overseas as a way to create more U.S. jobs and maintain the ones we already have. This objective is critical to the continued growth and leadership of the United States, and must be a top priority as U.S. industries face escalating competition overseas and an increasing number of governments strike preferential trade deals with other significant economies. Moreover, open and robust trade has proven time and again to improve economic welfare globally.

The U.S. government can increase market access for U.S. companies in three basic ways: (i) expand existing free trade agreements (FTAs) so they cover more markets and additional goods and services; (ii) negotiate additional robust FTAs on an accelerated basis; and (iii) use a combination of mechanisms (e.g., modernized agreements and promote persuasive best practices) to address emerging non-tariff barriers not covered by existing trade rules.

With regard to our second recommendation, we complement the Chairman and the Administration for passage of the FTAs with Colombia, Panama and South Korea. The U.S./Korea FTA (KORUS) is particularly important to Intel given the rapid growth of Korea's information economy. The Korean market is a top-ten destination for U.S. high-tech exports. KORUS eliminates tariffs on many high tech products within three years of enactment, and among other benefits, includes strong intellectual property (IP) enforcement requirements, e-commerce enabling provisions, state-of-the-art public participation rights in rulemaking and standard setting activities, and settlement authority for the Korean Fair Trade Commission.

With regard to our third recommendation, we note that traditional barriers such as local content requirements are being combined with new barriers raised by discriminatory incentives, security initiatives, and competition rules; cross-border data restrictions; and other domestic requirements that are counterproductive to both the local economy implementing them and global economic welfare. As discussed in Section V, a plethora of trade tools is necessary to effectively tackle these complex behind-the-border measures.

I. Market Access is Critical for our Industry

a. Intel Depends on Overseas Revenue to Create and Sustain Jobs at Home

Intel is a leading manufacturer of computer, communications and networking products. We have approximately one hundred thousand employees worldwide, with more than half of them based in the U.S. Our revenue last year was about \$54 billion, generated from sales to customers in more than 120 countries.

Our company is a prime example of why the U.S. government should increase U.S. exports by opening up new markets and removing or reducing existing trade barriers overseas. While three quarters of Intel's manufacturing capacity remains in the U.S., more than three quarters of our revenue is generated overseas. The revenue we generate outside of the U.S. helps create and sustain our high paying jobs at home.

Even during the strained economic climate of the last few years, Intel has continued to invest to stimulate economic and job growth. In February 2009, the company announced a \$7 billion upgrade to its manufacturing facilities in Oregon, Arizona, and New Mexico—projects that are helping to maintain approximately 7,000 high-wage, high-skill U.S. jobs while providing 4,000 contract jobs for technicians and construction workers.

In 2010, Intel announced that it will spend an additional \$6 billion to \$8 billion over the next several years to bring next-generation manufacturing technology to several existing factories across the U.S. and to build a new development factory in Oregon. This new investment will support approximately 6,000-8,000 additional U.S. construction jobs during the building phase, and eventually add approximately 800-1,000 Intel high-skilled, high-wage jobs.

And in 2011, Intel announced plans to invest more than \$5 billion in a new chip manufacturing facility, called Fab 42, in Chandler, Arizona. The new fab will create thousands of construction and permanent manufacturing jobs at Intel's Arizona site.

We have spent more than \$68 billion on U.S. operations, manufacturing and R&D, from 2002 to 2011. Most of the product manufactured from our U.S. investments will be sold to the 95% of worldwide consumers that live overseas. Access to global markets is essential to Intel's ability to create and maintain jobs in the U.S. and to our continued growth and prosperity.

b. The Semiconductor Industry's Future is Tied to Overseas Sales

Free trade is of particular importance to the growth of the entire semiconductor industry. According to the Semiconductor Industry Association (SIA), the U.S. semiconductor industry employs more than 180,000 people in the U.S. and makes almost half of the world's computer chips. This market for chips was worth about \$300 billion in 2011 and is growing every year. Over 80% of U.S. semiconductors go to customers outside the U.S. market and are sold in nearly every country in the world. According to the International Trade Commission (ITC), the semiconductor industry has been America's largest exporter when data are averaged over the last five years. However, as discussed below, the information technology industry is facing an increasing number of market access issues that need to be effectively and promptly addressed.

Exporting semiconductors creates real benefits not just for Intel's employees, but also for many other American workers. For example, those overseas sales allow leading-edge U.S. based chip makers to employ highly skilled and talented U.S. workers whose average income is almost \$100,000 per year. Additionally, domestic semiconductor makers invest about \$20 billion a year in research and development in the U.S. and invest over \$13 billion in capital equipment at home, which also spur new products and create new jobs both with our U.S. suppliers and at the semiconductor companies that are maintained by sales overseas.

II. Establish a Comprehensive U.S. Trade Policy Agenda

Intel believes that strong exports are critical to America's overall continued economic growth and the creation of good jobs in the United States in many other industries besides our own. As the U.S. government works with the private sector to find new ways to increase

domestic manufacturing, it also needs to pursue more initiatives to fulfill the Administration's goal of doubling exports by 2015.

With 95% of the world's consumers living outside of the U.S. and about 80% of global purchasing power outside the U.S., any increase in domestic manufacturing must be accompanied by additional opportunities to sell overseas. Those opportunities are created in large part by free trade agreements (FTAs), bilateral investment treaties (BITs), and other initiatives that establish the rules to force open other markets and promote and protect U.S. business interests.

There are still many barriers that need to be taken down. For example, the World Economic Forum Global Competitiveness Report for 2010-2011 listed the United States near the bottom, or 131st out of 139 economies, for exports of goods as a percentage of gross domestic product. Section V below discusses some of the non-tariff barriers that U.S. IT industries face.

According to the United Nations Industrial Development Organization's 2010 International Yearbook of Industrial Statistics, the U.S. continues to lead the world in manufacturing, with 19% of the worldwide value-added manufacturing output. However, the U.S. has dropped from first to third over the last 12 years in terms of the total quantity of goods exported.¹ As the competitiveness of other countries increases, the number of FTAs and BITs not involving the U.S. accelerates, and the variety of non-tariff barriers also increases, America may drop further in that ranking.

There is no panacea for leveling the playing field. As noted earlier, the U.S. government must use a variety of mechanisms to further increase our exports, improve our economy and thus create more U.S. jobs. Existing free trade agreements (FTAs) need to be expanded where possible so they cover more markets and additional goods and services. The U.S. government also needs to enter into additional FTAs on an accelerated basis without sacrificing their quality. Lastly, industries with trade supportive governments must work ever more closely together to shun and isolate protectionism, and show that open markets work best in the global economy.

III. Increase U.S. Exports by Expanding the Scope of Existing Agreements

Too many key markets are still subject to too few existing trade rules. We discuss several examples in this section involving multilateral agreements.

¹ Compare <http://umsl.edu/services/govdocs/wofact2000/fields/exports.html> with <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=US,CN>, <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=US>, and <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=US,DE>. While the WTO uses "merchandise" rather than "export" as a benchmark, the various ranking systems show the U.S. to have dropped at least three, if not four, places in terms of total goods exported since the late 90s.

1. Expand the Membership and Product Coverage of the ITA

The intent of the WTO Information Technology Agreement (ITA), negotiated some 16 years ago with strong bipartisan support,² was to promote the development of the emerging global digital economy at the lowest possible cost.³ By eliminating customs tariffs on a range of information communication technology (ICT) products in many countries, the ITA has dramatically increased U.S. exports. In fact, as noted earlier, semiconductors have been the largest U.S. export over the last five years. From 1996, when the ITA was signed, to 2008, total trade in ITA listed goods has increased more than 10 percent annually, from \$1.2 trillion to \$4.0 trillion. The dissemination of ICT without customs tariffs in many parts of the world has had a significant positive impact on the global economy by increasing productivity; creating high paying jobs and more efficient markets; raising the quality of innovation, goods, services and innovation; improving health care; and otherwise enhancing the quality of life.

But Mexico, Brazil and several other notable countries are not ITA signatories. And many of the digital products developed in the last fifteen years -- such as multi-component semiconductors, video game consoles, e-readers, and DRAMS, video game consoles, and flat panel displays -- are not covered by the ITA.

Preliminary industry studies indicate that an expanded ITA could remove tariffs on an additional \$800 billion in global ICT trade, with more than \$122 billion in U.S. ICT trade affected. The Information Technology and Innovation Foundation estimates, in a forthcoming report, that ITA expansion would increase direct U.S. exports by \$2.8 billion, boost U.S. revenues by \$10 billion, and support an estimated 60,000 new jobs.⁴

Intel strongly supports the U.S. Administration's recent efforts to begin negotiations to expand both membership and product coverage of the ITA, and we hope those negotiations can be concluded quickly.

2. Expand Membership of the GPA

Government procurement comprises a significant share of the global economy -- from 10-to-20 percent of the gross domestic product (GDP) for many countries. And, while estimates vary widely, many believe that global government procurement is a multi-trillion dollar market with the contestable share (i.e., the amount subject to international competition) being around 30% of that value.⁵

² The agreement is formally known as the "Ministerial Declaration on Trade in Information Technology Products", and was signed in Singapore on December 13, 1996 (WTO ref. WT/MIN(96)/16).

³ As former USTR Charlene Barshefsky put it, "The Information Technology Agreement . . . means that the creation of the information superhighway will be encouraged and promoted, not taxed." Statement at the conclusion of the Singapore Ministerial of the WTO, where the ITA was successfully concluded, December 1996.

⁴ This estimate assumes an average tariff of non-ITA covered ICT products of 5.3% and an average trade-weighted import demand elasticity of ITA members of 1.30.

⁵ The Size of Government Procurement Markets, OECD (2002) (using 1998 data), accessed at <http://www.oecd.org/dataoecd/34/14/1845927.pdf>; International Trade Statistics, World Trade Organization (2009) (using 2008 goods data), accessed at http://www.wto.org/english/res_e/status_e/its2009_e/its2009_e.pdf; Options for Global Trade Reform: A View from the Asia-Pacific (Trade and Development), edited by Will Martin and Mari Pangestu (2003) at 249.

Yet, none of the BRIC countries are signatories to the WTO Government Procurement Agreement (GPA) that prevents discrimination against foreign suppliers. This has enabled China, India and Brazil to promulgate measures designed to favor local suppliers, especially those in the electronic sector, as a way to unfairly build up and favor local companies and ICT related industries. Unfortunately, such policies not only will hurt U.S. companies, but also raise consumer prices and limit product choice within the countries promulgating them.

Brazil's government purchases domestically produced goods and services, even when these cost up to 25% more than the cheapest imported products and services, if they are developed by Brazilian companies that either (i) manufacture the goods at issue in Brazil or provide the services locally; or (ii) invest in R&D and the development of technology in the country. Implementing regulations, which require an increasing amount of local content each year to qualify for the preferences, are focused on defense, healthcare and ICT.⁶

In China, goods must have at least 50% local content to qualify under the Government Procurement Law, but foreign invested enterprises that can meet that threshold continue to face barriers to participating in procurement activities. Until last year, products also had to be certified as "indigenous innovation" by having their core IP owned by a China-based company.⁷ That latter requirement was deleted after pressure from several governments.

The Ministry of Communications and Information Technology (MCIT) of India, for its part, recommended in 2011 that government procurement preferences be given to all domestically produced electronic products and products made with Indian IP.⁸ Moreover, MCIT is attempting to extend domestic government procurement preferences in the telecom sector to cover private licensees, even though that would violate the national treatment clause of the General Agreement on Tariffs and Trade. Both the draft National Telecom Policy and Manufacturing Policy propose procurement preferences for domestic product in the telecom and other strategic technological sectors.⁹ The Cabinet of India just approved a broader proposal to provide government procurement preferences, on a graded value-add basis, to all domestically manufactured electronic products (whether for the telecom sector or not).¹⁰

Russia has a narrower public procurement preference program than the other BRIC countries. In 2010, the Ministry of Industry and Trade prepared a draft decree that will enable domestic manufacturers to receive preferences in state procurements tenders of telecommunication equipment for LTE networks where not less than 50% of the stock of the company belongs to the Russian state or its citizens, and the entire product cycle (e.g., R&D, manufacturing and assembly) of components (e.g., printed circuit boards) needed for the telecom equipment that the domestic company engages occurs in Russia. In addition, the qualifying

⁶ Government Purchase Law (No. 8.666, promulgated in 1993).

⁷ For a summary of the procurement laws and regulations in China, see PRC Government Procurement Policy, The U.S.-China Business Council (July 2009); available:

https://www.uschina.org/public/documents/2009/07/government_procurement.pdf.

⁸ Progress Report on the 100-Days Plan of Action of Ministry of Communications & Information Technology Announced on January 01 This Year (April 11, 2011), DoT Action Point 8(c) and DIT Action Point 8(c). Similar procurement preferences may soon be available in other industry sectors per the Prime Minister's mandate to increase domestic R&D and manufacturing at large.

⁹ Draft National Telecom Policy, Section III.9; Draft Manufacturing Policy, Sections 1.22 and 8.2.

¹⁰ See <http://pib.nic.in/newsite/PrintRelease.aspx?relid=80674>.

manufacturer must own the rights to software used in the equipment and the required local content level for components in the telecom equipment rises each year.¹¹

These types of market preferences can significantly distort trade because government procurement comprises a significant share of the global economy. We need to find a way to incentivize other large governments to join the GPA with contract thresholds and coverage of regulatory authorities which are similar in scope to that provided by the U.S. More efficient, accountable, competitive and transparent procurement structures are increasingly critical for all governments, as they seek to provide their citizens with the highest quality goods and services within significant fiscal constraints.

IV. Increase the Number of Robust FTAs on an Accelerated Basis

As noted by ECAT in its annual report, trade flow data show how important FTAs are to the U.S. economy. Trade between the U.S. and the 17 countries with which the U.S. had FTAs in force by the end of 2011 accounted for nearly \$1.3 trillion, or almost 35 percent, of total U.S. trade and 41 percent of U.S. exports that year, while those countries represent only 7 percent of the world economy. U.S. exports to every single FTA partner country have increased dramatically after those agreements were implemented. ECAT expects a similar economic boost for American enterprises and workers once the recently approved Colombia, Korea and Panama agreements are fully implemented.¹²

Today, however, "the United States lacks an ambitious trade policy and has not kept pace with other countries in opening new markets abroad, especially in the fast-growing economies of Asia and Latin America that are now major engines of global growth."¹³ According to WTO data, about 380 regional trade agreements (RTAs) have been negotiated worldwide and, of those, 202 RTAs have entered into force. The United States is party to only twelve such agreements with a total of 17 countries. In contrast, the European Union has 28 RTAs in force with 29 countries, and is in negotiations with India, Canada and Ukraine. China has ten RTAs in force with 20 countries, and another five in negotiation; India has 13 RTAs in force with a total of 25 countries and another three in negotiation. Similarly, when it comes to bilateral investment treaties, the U.S. lags behind in a world with nearly 3,000 BITs. In particular, the 40 U.S. BITs in force are far less than half of Germany's 138 BITs and considerably less than China's 70 BITs or even Korea's 57 BITs.¹⁴

Of course, the U.S. government must be selective in allocating its limited resources and determine which governments it can negotiate with to produce the most mutual benefit. We only cover two examples here of possibilities, one of which already is underway.

¹¹ Draft "Order on approval of the parameter values, methods of the parameter value determination and the order of assignment of the status of the *Russian domestic telecommunications equipment* to telecommunications equipment manufactured within the territory of the Russian Federation," Ministry of Industry and Trade of the Russian Federation (July, 26th, 2010).

¹² ECAT Letters to Senators Max Baucus and Orrin Hatch (June 30, 2011).

¹³ CFR Task Force, *supra* note 1, p. 3.

¹⁴ See generally http://www.wto.org/english/tratop_e/region_e/rtu_participation_map_e.htm; <http://icsid.worldbank.org/ICSID/FrontServlet#>.

1. Negotiate a Comprehensive U.S./EC FTA

The discussions between the U.S. Administration and the European Commission on the need to further integrate the two economies are encouraging. However, we need action. The recently formed U.S./EU High Level Working Group on Jobs and Growth should be used to develop a barrier-free transatlantic market, which would maximize the benefits of the largest commercial relationship in the world. A trade agreement between the U.S. and the EU should be comprehensive, addressing both remaining tariffs and non-tariff barriers, even if it must be done in bite size steps that are parallel processed to provide momentum through interim successes.

2. Ensure a High Quality TPP Agreement that Will Serve as a Template for Other FTAs

The negotiations that are currently occurring in connection with the Trans-Pacific Partnership (TPP) Agreement also are very encouraging. As indicated by several examples in Section V below, USTR staff has exercised considerable effort to make the TPP agreement the gold standard for trade rules. Of interest to Intel, USTR is pushing for increased trade secret protection,¹⁵ enhanced e-commerce provisions, more robust due process protections in competition cases. However, raising the bar significantly requires more time and Intel is concerned that the high quality of the TPP agreement may be partially sacrificed as a result of the agency's strong desire to finalize negotiations this year. We would recommend that USTR continue to work diligently to maximize the momentum it has developed in the TPP negotiations, but not pursue an arbitrary deadline as the end goal. Intel also is very supportive of other governments such as Japan, Mexico and Canada joining the TPP, but only if the high standard being pursued is maintained.

V. Employ a Combination of Mechanisms to Address Emerging NTBs

At least three dozen countries have implemented national innovation strategies to increase their competitiveness and generate more economic growth.¹⁶ The nature of those strategies differs widely among governments, however, and the difference between innovation and industrial policy is often murky at best.¹⁷ U.S. companies increasingly face a host of measures intended to spur local R&D, IPR and manufacturing that are exempt from WTO requirements, do not always comply with those requirements, and/or fall within the cracks.

One prime example of such measures is the proliferation of government procurement preferences in the BRIC countries that we mentioned in Section III.2. But there are others.

For example, the Telecom Regulatory Authority of India (TRAI) has proposed a number of incentives for Indian companies that manufacture with Indian materials or incorporate Indian

¹⁵ Intel notes, however, that many companies in a number of industries do not believe that USTR is pushing hard enough on a critical emerging issue. The loss of trade secrets, valued at \$5 trillion by one estimate, is increasing globally due to increased competitiveness, global data flows, and other factors.

¹⁶ Stephen Ezell, "America and the World We're Number 40," *Democracy: A Journal of Ideas*, Issue # 14, Fall 2009, <http://www.democracyjournal.org/article.php?ID=6703>.

¹⁷ See generally, "The Good, The Bad and The Ugly (and The Self-Destructive) of Innovation Policy: A Policymakers Guide to Creating Effective Innovation Policy," The Information Technology and Innovation Foundation (October 2010).

IP, regardless of whether the products are sold to the government or commercial market.¹⁸ These incentives include tax breaks and R&D grants that potentially violate the WTO Agreement on Subsidies and Countervailing Measures, which prohibits conditioning incentives on the use of local content. Moreover, a task force operating under the Indian Ministry of Corporate Affairs has suggested that, as a bedrock principle of competition policy, intellectual property owned by a dominant company be made accessible to any third party that needs it to compete. On a related note, in 2010 a division in India's Ministry of Commerce argued that "compulsory licensing has a strong and persistent positive effect on domestic invention."

A number of the indigenous innovation policies that Indian regulatory authorities have been promulgating since early 2010 are very similar to those which the Chinese government has promulgated over the last seven years and that the U.S. government is familiar with. For instance,

- India's draft National Telecom Policy not only links government procurement preferences to domestic product, but also to domestic IPR. As many in Congress well know, early last year the U.S. Administration succeeded in persuading China to delink procurement preferences from the location or origin of IPR.
- As with the network regulations that the Certification and Accreditation Administration of China (CNCA) issued several years ago, in 2010 India's Department of Telecommunications required the disclosure of source code as part of its certification process.¹⁹ The U.S. and other governments were able to persuade India, but not China, to remove that troublesome disclosure requirement.
- The Chinese government has supported an array of "voluntary" national standards that favor domestic technologies even when relevant international standards exist. Likewise, the Government of India is now supporting the development of Indian standards in the telecom sector.

The trend to pursue trade distorting innovation and manufacturing policies is not limited just to China and India, but is spreading to other regions.

Brazil, for example, is experimenting more deeply with industrial policy in the technology sector by providing tax incentives for local production and investment.²⁰ The general legal framework for encouraging local R&D and manufacturing in Brazil has been in place for several decades, but recent implementing regulations on products such as tablets are enforcing the law and micromanaging local content additions. Moreover, as in India, Brazilian policy linking incentives to local content is spreading to other regulatory areas such as spectrum allocation. Specifically, a recent auction proposal by Brazil's agency over national telecommunications would require a winning bidder to purchase an annually increasing

¹⁸ See generally *Recommendations on Telecom Equipment Manufacturing Policy*, Telecom Regulatory Authority of India (12th April, 2011) [hereinafter "TRAI Recommendations"]. The TRAI Recommendations were submitted by the Ministry of Communications and Information Technology for its consideration.

¹⁹ See Template of the Agreement Between Telecom Service Provider and the Vendor of Equipment, Products and Services (28 July 2010).

²⁰ See generally Brazil's Information Technology Law, No. 8.248 (January 23, 1991)

percentage of locally manufactured and locally designed goods for the telecommunications and data networks that would use the spectrum being auctioned.²¹

Argentina, for its part, is targeting all imports into its country by imposing ever more restrictive import licensing restrictions under which a license is not granted within the WTO required 60 day period unless affected companies meet unrelated government demands, such as agreeing to manufacture locally. Many U.S. companies still have products awaiting entry and are not making anticipated sales in the country.²²

There is no single solution to solve these intertwined, complex and evolving trade distortive measures. Rather, the U.S. government should continue to employ a combination of mechanisms to convince governments to pursue a more open and proven approach to increase their competitiveness. To some extent, as noted below, the U.S. government already has been doing that with trade distortive regulations and policies that China has developed and enacted. Yet those existing mechanisms can be applied more robustly and to other emerging economies like India and Brazil, which also are struggling to develop policies that enhance their economies.

The following are some of the mechanisms that have shown to help address more fully the complex and evolving trade distortive measures.

1. Address Trade Issues Preemptively in Bilateral and Multilateral Fora

The U.S. Administration has had some success in working with China on a number of trade related issues in the U.S./China Joint Commission on Commerce and Trade (JCCT) and the more strategic or high level U.S./China Strategic and Economic Dialogue (S&ED). Through the JCCT the Chinese government has made many commitments, including the following:

- Stay out of royalty negotiations between IPR holders and let market forces govern,
- Improve IPR enforcement,
- Remain technology neutral regarding the standard or technologies used in 3G or successor networks,
- Delink government procurement from the origin of IPR,
- Cut back on information security certification rules that would bar a number of U.S. network products from the Chinese market so that they apply only to government procurement,
- Submit an improved GPA offer,
- Allow foreign stakeholders to participate in national standard setting activities as well as technical regulatory and conformity assessment developments,
- Provide a detailed account of its subsidies to the WTO by the end of 2005,
- Suspend indefinitely its proposed implementation of WAPI as a mandatory wireless encryption standard, and

²¹ See generally ANATEL Proposal, Public Consultation No. 4 on the proposed tender rules for the 450 MHz and 2.5 GHz spectrum bands (February 2012).

²² Multi-Trade Association Letter to Ambassador Ron Kirk and Deputy Assistant Michael Froman (February 10, 2012).

- Eliminate its 70 percent local content requirement for wind powered equipment.²³

A number of these JCCT commitments have been implemented. Others have not, or have been only partially implemented and often in a delayed manner. Still, as non-binding fora, the JCCT and S&ED have been very helpful because they allow and even encourage dialogue on general economic policies and specific trade issues (whether covered by trade rules or not) before they create significant damage. The U.S. Administration, however, may want to more carefully track the completion of the Chinese commitments made to date. In addition, the Administration may also want to apply a similar model to its U.S./India bilateral fora and the U.S./EU TEC, as those mechanisms do not seem to get the same attention or generate similar commitments from Indian or EU officials.

2. Establish Additional Best Practices and Principles Through Multilateral Fora

The development of international best practices, principles and standards can help fill in the “regulatory gaps” not suited for binding international agreements. These alternatives to national regulation have the unique benefits of being more flexible (e.g., not locking in technology), are easier to update, and ensure greater interoperability. Because of its non-binding nature, the Asia Pacific Economic Cooperation (APEC) has experimented extensively with principles and practices as guidelines to further enable the digital economy in its 21 member economies while balancing IPR, privacy, security, and other legitimate concerns.

For instance, APEC’s Digital Prosperity Checklist (“DPCL”) is “designed to assist APEC economies in promoting the use and development of ICTs as a means to enhance their ability to participate in the global digital economy.” To that end, the DPCL “will provide a unique, yet critical tool for individual APEC economies to evaluate whether their domestic legal, regulatory, and trade policy frameworks are designed to positively impact the capacity of ICTs to generate value for their economies.”²⁴ The DPCL references a number of ICT best practices and standards in connection with investment, infrastructure, innovation, intellectual capital, information flows, and integration of industries with the global economy. The DPCL best practices and standards developed with industry assistance serve as guides for national legislation where appropriate. As such, they should be reinforced by repeatedly referencing them in official documents and highlighting APEC economies that follow them.

There are various ways that the U.S. government could provide even more support than it already does for standards and best practices that address thorny trade issues not capable of adequately being solved through FTAs. Several examples follow.

A. Time Tested Innovation Principles

The drive by various governments to increase indigenous innovation makes sense as they seek to rise up the value chain and create more jobs within their countries. The challenge lies in crafting and implementing such policies so that they are both effective domestically and not trade distortive internationally.

²³ See “China’s JCCT Commitments, 2004-10,” The US-China Business Council (As of December 16, 2010).

²⁴ APEC Digital Prosperity Checklist (November 10, 2008).

The U.S. Administration and China agreed to develop some very high level time tested innovation principles to guide each government in developing policies that are not trade-distortive. The U.S. high tech industry then worked with USTR to develop some more robust innovation principles, which APEC adopted in November of 2011. Then, the U.S. Administration wisely breathed more life into the APEC principles in the U.S./China JCCT held several weeks later:

“Building on the innovation principles agreed to in the 2011 APEC Leaders’ Declaration, China and the United States agree to use the JCCT Intellectual Property Rights Working Group to study investment, tax and other regulatory measures outside of government procurement, with the first phase of study in 2012 covering investment and tax, and the second phase in 2013 covering key measures in other areas, to determine whether the receipt of government benefits is linked to where intellectual property is owned or developed, or to the licensing of technology by foreign investors to host country entities. The two sides will actively discuss removal of these barriers that distort trade and investment.”²⁵

APEC’s sound innovation principles should be promoted elsewhere. The U.S. and the EU have an Innovation Work Group established under the Transatlantic Economic Council (TEC)²⁶ that could develop similar principles, for example by expanding the U.S./EU principles on ICT services that the two governments adopted last year.²⁷ In fact, the Trans-Atlantic Business Dialogue has submitted a comprehensive set of innovation principles for adoption by both governments, but to date neither one has indicated a desire to do so.

B. Global Information Security Standards and Best Practices

Industry and government have an equal incentive to ensure and increase information security, including cybersecurity.²⁸ Industry seeks a secure cyber infrastructure that will encourage commercial activities and the continued growth of the global digital infrastructure. Governments want to (1) ensure that cyberspace’s benefits continue to accrue to their economies and citizens, and (2) prevent criminals from using cyberspace to undertake fraud, espionage, crime, and terrorist activities - activities that traditionally occurred offline.

Fortunately, governments, infrastructure owners, operators and users, and the information technology industry have a variety of tools to address information security and cybersecurity risks and challenges. These tools include technology standards, training, guidelines and best practices on information sharing, risk management, etc. As governments seek to address risks in cyberspace, it is important that any measures they adopt properly reflect the borderless, global, interdependent cyber infrastructure. Internationally harmonized cybersecurity measures will

²⁵ See <http://www.commerce.gov/news/fact-sheets/2011/11/21/22nd-us-china-joint-commission-commerce-and-trade-fact-sheet>.

²⁶ See <http://www.state.gov/p/csr/t/cu/icc/>.

²⁷ See <http://europa.eu.int/press/news.asp?idn=12177>.

²⁸ The interdependent network of information system infrastructures that includes the Internet, telecommunications networks, computer systems, embedded processors and controllers, and digital information is collectively known as “cyberspace.” Security enables this global digital infrastructure by creating a trusted, robust, and interoperable environment in which economic transactions and activities can occur.

promote interoperability, minimize “weak links” that result in vulnerabilities, lower costs for businesses that can deploy security measures globally, and free up vendors’ resources to continue to invest and innovate. As noted in this Administration’s Cyberspace Policy Review, “International norms are critical to establishing a secure and thriving digital infrastructure.”²⁹

Joint action from government and industry is necessary to address evolving security challenges in the global environment. They need to work together to develop international standards, policies and practices that take into account the dynamic, changing, and complex cyber environment, and adapt at cyberspace speed to emerging technologies, business models, and threats. Cybersecurity measures that are adopted by a country without reliance on international policies and practices or technical assistance derived from a robust private/public partnership create uncertainty and inhibit the growth of e-commerce. For instance, according to various sources, the building of a telecommunications infrastructure in India slowed significantly last year because that government, without an official consultation process, attempted to mandate contractual terms between telecommunications equipment vendors and Internet Service Providers for security reasons.

The “Encryption Regulation Best Practices” developed by the World Semiconductor Council (WSC) provide an excellent example of how private/public partnerships can tackle modern day cross-border issues effectively. Encryption is now ubiquitous in widely available ICT, including semiconductors. For those widely available ICT products, the WSC best practices -- developed in 2009 and refined in 2010³⁰ -- establish a presumption of no regulation except in narrow and justifiable circumstances (e.g., resulting out of international conventions such as export controls to prevent proliferation of munitions and weapons of mass destruction to targeted countries or targeted end users). To the extent that encryption regulation is necessary, the WSC best practices state that:

- Such regulations should not directly or indirectly favor specific technologies, limit market access or lead to forced transfer of intellectual property;
- Any regulatory requirements must be applied on a non-discriminatory basis and respect intellectual property rights;
- Global collaboration and open markets for commercial encryption technologies should be strongly encouraged as both inherently promote more secure and innovative ICT products; and
- Any necessary licensing procedures should be transparent, predictable and consistent with international norms and practices.

These Encryption Regulation Best Practices were adopted by the six governments that have trade associations in the WSC. These governments are China, South Korea, Taiwan, Europe, Japan and the United States. The WSC best practices should be promoted globally

²⁹ Cyberspace Policy Review: Assuring a Trusted and Resilient Information and Communications Infrastructure (June 26, 2010).

³⁰ See Joint Statement of the 14th Meeting of the World Semiconductor Council, Free and Open Markets. Seoul Korea (May 27, 2010).

through other vehicles to prevent countries like Russia and India from enacting encryption regulation that could significantly impact the importation of U.S. IT products and reduce the security of domestic digital infrastructure by preventing leading edge products from being used.

C. Incorporate Best Practices into FTAs

USTR should consider using FTAs as a legal tool to push for, support, and even reference relevant international standards and best practices. For instance, in the information security space, FTAs could rely on the common criteria assurance procedure and incorporate emerging APEC work product “to develop options for effective cyber security initiatives against cyber threats,”³¹ assuming those initiatives turn out to be feasible and well balanced.

Such an effort would not be unprecedented. We understand the TPP agreement under negotiation would establish a right to cross-border data flows in conjunction with relevant service commitments made by each Party (e.g., computer services), subject only to legitimate privacy requirements that don’t interfere unnecessarily with e-commerce. Specifically, USTR has indicated that the relevant TPP provision references APEC’s Cross-Border Privacy Rules³² as one option to accommodate privacy concerns. These APEC principles were developed to allow cross-border flows of information while ensuring both the protection of consumers.

D. Find Ways to Establish “Living Agreements”

We must not only increase the pace of trade negotiations, but also ensure that the agreements being negotiated effectively address as many forms of emerging non-tariff barriers as possible. As Intel testified in a Senate hearing in 2010 on International Trade in the Digital Economy, there are a number of emerging trade barriers specific to IT goods and services that need to be addressed.³³ For example, much progress still needs to be made in liberalizing digital services. We are confident that similar gaps exist in other dynamic industries as product cycles continue to accelerate in time.³⁴

USTR has improved and modernized the language FTAs over time. Of relevance to Intel, FTAs now enable e-commerce (as noted earlier); allow trade in both the equipment and devices that make up the IT infrastructure; and also allow trade in the digital goods and services the IT infrastructure enables. Moreover, the latest model language for FTAs contains various provisions requiring the Parties to cooperate on an ongoing basis; for example, to ensure regulatory alignment with international technology standards and prevent deceptive practices in

³¹ Draft Okinawa Declaration, “ICT as an Engine for New Socio-economic Growth,” The Eighth APFC Ministerial Meeting on the Telecommunications and Information Industry (TELMIN 8) (30-31 October, 2010, Okinawa, Japan).

³² Although one of the latest free trade agreements approved by Congress, the U.S./Korea US FTA, acknowledges the importance of protecting personal information (Art. 15.8), it does not provide any other guidance on how to achieve that objective. In theory, therefore, Korea could take an overly stringent approach to protecting privacy rights that would disadvantage U.S. industry.

³³ See generally Prepared Statement of Intel Corporation, “International Trade in the Digital Economy,” Subcommittee on International Trade, Customs, and Global Competitiveness, U.S. Senate (November 18, 2010).

³⁴ See “Forced Localization of Global Companies Business Activities,” Handout given at The 2011 Global Services Summit: Engaging the Dynamic Asian Economies, Washington, DC (July 20, 2011).

e-commerce to enhance consumer welfare.³⁵ Such cooperative mechanisms are important to expand an FTA's capability to evolve as growth of the digital economy creates new challenges.

Another way to lengthen the useful life of an FTA is to include a periodic review mechanism where the negotiating parties commit to upgrade and expand the FTA. There is precedent for this in the FTA between Australia and New Zealand called Closer Economic Relations (CER). After initial adoption of the agreement's predecessor, there were several formal reviews every three or four years that resulted in additional provisions being added. The parties then decided to conduct annual reviews of CER. A long list of additional agreements resulted from these annual reviews. One of the most important results of CER was the Protocol on the Acceleration of Free Trade in Goods, which resulted in the total elimination of tariffs or quantitative restrictions between the two countries. This agreement was finalized five years ahead of schedule.³⁶

VI. Conclusion

As Congress continues to explore ways to increase the competitiveness of U.S. industries, Intel recommends that it also work in parallel with the Administration to open up the biggest and fastest-growing emerging markets using a variety of mechanisms tailored to the issues at hand and to the targeted markets. These mechanisms should include mutually beneficial commitments on complex trade distortive issues derived from non-binding regular bilateral dialogues; the increase in and use of modern rules that take into account emerging non-tariff barriers; and the promotion of best practices and principles where FTAs do not reach the issues being addressed. In sum, we need an increase in proactive standards, practices and binding international rules that are modernized to further reap the benefits of a digital economy. This recommended trade agenda is ambitious, but necessary to ensure America is in a position to effectively compete on a level playing field that benefits the entire global economy.

³⁵ See, e.g., KORUS Articles 9.4.1 & 15.5.2.3.

³⁶ See generally <http://www.newzealand.embassy.gov.au/vln/CloserEconRel.html>; http://en.wikipedia.org/wiki/Closer_Economic_Relations.

Mr. BRADY. Mr. Quigley.

**STATEMENT OF JAMES H. QUIGLEY, SENIOR PARTNER,
DELOITTE LLP**

Mr. QUIGLEY. Thank you, Congressman Brady. I appreciate the chance to testify here before the Committee on the future directions of international trade policy and negotiations.

I have submitted a written statement and I ask that be included in the record of the hearing.

My name is Jim Quigley. I am a senior partner of Deloitte LLP, and prior to that role, I was the chief executive officer of Deloitte

Touche Tohmatsu Limited, a global network of Deloitte Member firms around the world that provides services in 153 countries. We definitely have an interest in your work on trade.

This hearing is both important and timely because there is no more significant issue facing our Nation than the need for economic growth and jobs.

Trade negotiations to open markets and strengthen the rules of fair international competition are a critical component of the policies needed to address growth and employment.

Deloitte has long supported the multi-lateral trading system and like many others, we had hoped for a successful conclusion of the Doha development round of negotiations with agreement on a broad market opening package for services, manufactured products and agriculture. Unfortunately, this appears to be beyond the reach of negotiators in the foreseeable future.

Although the suspension of the Doha round is disappointing, it does give us an opportunity to reassess our negotiating objectives and launch some initiatives that might prove more successful in the immediate timeframe.

Over the past few years, I have had the good fortune to co-chair the Transatlantic Business Dialog and over the past several months, I have served as a Member of the Transatlantic Task Force on Trade and Investments, sponsored by the German Marshall Fund of the United States and the European Center for International Political Economy.

Both have recently articulated their visions for the future of global trade and investment built on a strong transatlantic platform.

This makes both good political and good economic sense. The U.S. and the EU already have the largest trade and investment relationships in the world.

We enjoy relatively similar wage and benefit structures and labor rights and worker protections. We have common concerns about the environment and the health and safety of our citizens, and we have generally robust intellectual property protections, and we have a shared view of the global trading system based on free markets and fair competition.

Given the level of integration that already exists, we have an opportunity to raise the transatlantic relationship to a whole new level, a real partnership for jobs and growth.

In this connection, I hope the high level working group that Ambassador Kirk earlier referenced that is co-chaired by him and Commissioner DeGucht will set an ambitious agenda, constrained neither by old trade concepts, such as FTAs, nor by past issues where agreement has proved elusive.

We should strive for a truly barrier free transatlantic marketplace. This could bring enormous benefits in three ways.

First, it would add hundreds of billions of dollars to our economic output, more than \$120 billion from the removal of tariffs, and more than \$210 billion from the removal of even half of the non-tariff barriers.

This is to say nothing of the potential gains in the service sector.

Second, it would also allow us to tackle issues that are significant to business in the 21st century that have not been addressed or only timidly addressed in multilateral negotiations, such as serv-

ices, information flows, government procurement, the movement of talent, product and service standards, and regulations, to name some of the prominent few.

Third, it would set the stage for engaging other countries in more productive negotiations.

Success on the transatlantic front might draw other countries into negotiations so that their companies can remain competitive in a transatlantic marketplace, and others might be encouraged by seeing that new and innovative solutions can be found to difficult issues.

Negotiations between the U.S. and the EU to achieve these objectives should not be pursued as a single undertaking where success in one area is dependent on success in all others.

Negotiations should seek positive outcomes in each area at whatever negotiating pace is possible. Forward movement should not be stymied by attempting to resolve up front all those difficult issues that have proven intractable in the past.

The goal here is not to build a transatlantic fortress. Quite to the contrary, we should use progress in the transatlantic space to engage third countries and pave the way for broader trade liberalization and economic cooperation in services, investment regulation, and other areas I mentioned.

Our objective here should be forward movement on a broad front but rooted in the transatlantic commitment to a trading system based on free markets and fair competition.

Stalemate serves no one's purpose and certainly will not lead to growth and employment that our economy and others so desperately need.

Thank you again for the opportunity to express these views, and I would be happy to respond to questions.

[The prepared statement of Mr. Quigley follows:]

STATEMENT OF
JAMES H. QUIGLEY, SENIOR PARTNER, DELOITTE LLP
BEFORE
THE COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC

February 29, 2012

Panel on the Future of US Trade Negotiations

Thank you, Chairman Camp and Members of the Committee, for the opportunity to share some views on future directions in US international trade policy and negotiations.

My name is Jim Quigley. I am the Senior Partner of Deloitte LLP and former Chief Executive of Deloitte Touche Tohmatsu Limited.¹ I serve as Co-Chair of the TransAtlantic Business Dialogue, an organization of leading US and European CEOs, which serves as the official business adviser to the Transatlantic Economic Council. I also am a Member of the Trans-Atlantic Task Force on Trade and Investment, a joint project of the German Marshall Fund of the United States and the European Center for International Political Economy. And I recently was appointed a Trustee of the International Financial Reporting Standards Foundation.

A Deloitte Perspective on Global Trade

By way of background, Deloitte Member Firms provide audit, tax, consulting and financial advisory services in 153 countries around the globe. In FY 2011, Member Firms generated an aggregate \$28.8 billion in revenue and employed 182,000 people. This is a net gain of 12,000 employees over the previous year. For the Deloitte US

¹ Professional service firms across the globe are members of Deloitte Touche Tohmatsu Limited (DTTL). These firms are owned and managed by the partners in the various geographic jurisdictions. I will refer to this network of firms and DTTL collectively as the "Deloitte Network" and to the individual firms in the Deloitte Network as "Member Firms."

Member Firm, FY 2011 revenues came to \$11.9 billion and we employed just over 51,000 individuals.

Globally, the 300 largest Deloitte clients are served, on average, by Member Firms in 17 countries. Thirty-nine percent of the revenue from these clients is generated by cross-border business. And there are approximately 4,500 Deloitte professionals on assignment outside their home countries.

I cite these particulars because I think they illustrate the global nature of the Deloitte Network, the global professional service requirements of Member Firm clients, and the importance of international markets to the success of our Member Firms. They also suggest the interest the Deloitte Network has in a well-functioning, rules-based global trading system and continuing trade liberalization. Certainly, trade expansion over the past 60+ years, fostered by the General Agreement on Tariffs and Trade and, more recently, the World Trade Organization, has contributed significantly to the growth of the global economy, jobs and income. And it certainly set the conditions for the global expansion of the Deloitte Network and underlies our organization's ability to serve clients on a multinational and cross-border basis.

New Trade Initiatives Must Address New Realities

Given the Deloitte Network's global footprint, it will come as no surprise to you that our organization strongly supports the multilateral trading system and a successful conclusion to the Doha Development Round of trade negotiations. A multilateral agreement to bring down trade barriers and reform the rules of trade is certainly our first choice when it comes to trade negotiating objectives. Having said that, however, after ten years of WTO negotiations without agreement in sight, it is my view that we need to pursue alternative approaches to trade expansion. In some senses the alternatives may seem to be "second best," but we have to face the reality that our preferred option is simply not achievable, at least not in the foreseeable future.

In moving forward on a new trade agenda, it is important that we recognize the realities of global commerce in the 21st Century and make sure that new initiatives take them into account. Here I would identify six key points:

1. International trade is inextricably linked with international investment. Rules on investment and a reduction in discriminatory investment measures must be part of the broader trade agenda. The value of sales by foreign affiliates of US parent companies, for example, comes to three times the value of US exports of goods and services -- \$4.885 billion vs. \$1.575 billion in 2009, the latest year for which the official data are available for both affiliate sales and exports.² A number of studies have demonstrated that this presence abroad supports production and jobs at home.³ Yet, there is no common body of rules addressing investment issues, and negotiations on US bilateral investment treaties with China, India and Russia, for example, have not progressed in recent years.
2. Opening up trade in services has not received the attention it deserves. Services make up the biggest share of global economic output and employ the largest number of workers worldwide. Efficient, cost-effective, state-of-the-art, globally-available services are critical to agricultural and industrial production and trade. Yet, progress in reducing barriers to services trade and investment has been painfully slow.
3. Discriminatory and differential regulation is increasingly an obstacle to trade, investment and the ability to conduct business in multiple markets. As border measures have been reduced and eliminated through successive trade negotiations, behind-the-border regulation and divergent regulatory approaches among countries loom ever larger as obstacles to doing business. These introduce costly inefficiencies and can even frustrate the objectives of the regulations themselves.

² Bureau of Economic Analysis and Census Bureau, US Department of Commerce.

³ See, for example, Matthew J. Slaughter, "How U.S. Multinational Companies Strengthen the U.S. Economy," United States Council Foundation and the Business Roundtable, Spring 2009 and updated March 2010. Also, Matthew J. Slaughter, "Cross-Border Investment in the Global Economy: Its Benefits of the Past and Its Prospects for the Future," Deloitte Center for Cross-Border Investment, March 2011.

This is a point of particular interest to the Deloitte Network and other global audit and accounting networks. Since 2002 our organization's core professional practices in audit and assurance have gone from self-regulation to government regulation in most markets around the globe. Our Member Firms have embraced this change. But, inconsistencies in regulatory approaches between jurisdictions, including conflicts of law, and overlapping and redundant regulatory and oversight practices have imposed unnecessary costs, inefficiencies and complexities for our Member Firms and their clients, without adding to quality or effectiveness.

4. There is growing evidence that the traditional model of free-market capitalism is being challenged on the global stage by state-directed capitalism, largely in the form of state-owned enterprises (SOEs). SOEs enjoy government support in finance, preferential procurement, market protection, regulatory treatment, technology transfer and in many other forms, and they are increasingly competing with private companies in domestic and international markets. It is important that trading rules preserve a level playing field and fair terms of competition.
5. It is widely recognized that a new group of countries has emerged as significant economic players on the global stage and potential leaders in global economic fora. It is important to the future of the world trading system that these countries play an active, committed and responsible role in efforts to liberalize trade and foster effective and fair trading rules.
6. Finally, the pace of multilateral trade negotiations has slowed at the same time that product and service life cycles have grown ever shorter. Inevitably, trade negotiations lag the realities of the business world, but the gap is widening, meaning that negotiations increasingly run the danger of missing the mark. The reasons are manifold – the number of negotiating partners, complexity of the issues, protectionist push-back – but the disconnect needs to be addressed.

Begin with the Transatlantic Dimension

As I mentioned at the outset, I have had the good fortune of Co-Chairing the TransAtlantic Business Dialogue (TABD) for the past four years. And for the past nine months, I have served as a Member of the Transatlantic Task Force on Trade and Investment (TATF), a joint project of the German Marshall Fund of the United States and the European Center for International Political Economy. Both have recently articulated their visions for the future of global trade and investment built on a strong transatlantic platform. TABD and the Business Roundtable have developed a joint statement on “Forging a Transatlantic Partnership for the 21st Century,” and the TATF released earlier this month its report on “A New Era for Transatlantic Trade Leadership.”

While these are independent initiatives they have come to similar conclusions about the centrality of the US-EU relationship; not only the contribution it can make to economic growth and employment, but also the possibilities of leveraging deeper economic integration to address global trade challenges, including those I outlined previously. This makes good sense on many levels. The transatlantic relationship is the largest trading relationship in the world and it is the largest investment relationship. The US and EU enjoy relatively similar wage and benefit structures, and labor rights and worker protections. We have common concerns about the environment and the health and safety of our citizens. We have generally robust intellectual property protections, helping to foster innovation and the development of new technologies, products and services. And we have a shared view of the global trading system based on free markets and fair competition.

These are promising conditions for furthering economic integration. In this context, both TABD and the TATF have welcomed the establishment of the High Level Working Group on Jobs and Growth, co-chaired by US Trade Representative Ron Kirk and EU Commissioner for Trade Karel DeGucht, and agree with its mission of fostering trade expansion in order to spur economic growth and job creation. Both TABD and the

TATF, in their own ways, call on the US and EU leadership to adopt a vision of partnership and an agenda that goes beyond the traditional Free Trade Agreement (FTA) to creation of a barrier-free transatlantic market. This agenda should include:

- The elimination of tariffs and non-tariff barriers to trade in goods;
- The removal of market access barriers to trade in services;
- Achieving a much higher level of regulatory convergence and cooperation and alignment of standards and practices, whether through harmonization, mutual recognition, adoption of international standards, or other methods;
- Removing restrictions on job-creating investments;
- Encouraging the flow of professional, technical and managerial talent across the transatlantic space; and
- Addressing government procurement, trans-border data flows, and a host of other issues.

Negotiations between the US and the EU to achieve these objectives should not be pursued as a “single undertaking” with success in one area dependent on success in all the others. Rather, negotiators should seek positive outcomes in each area at whatever negotiating pace is possible. Moreover, forward movement should not be stymied by attempting to resolve all those difficult issues that have proven intractable in the past.

A Platform for Advancing a Global Trade Agenda

Building a strong transatlantic partnership and moving towards a barrier-free transatlantic market, I am convinced, will contribute to economic growth and job creation in both the

United States and Europe. They also can be strong inducements to progress on a broader global trade agenda.

To this end, US-EU agreements should have an open architecture that permits other countries to join, so long as they are willing to accept the same levels of liberalization and the same rules of the game. Progress in the transatlantic space may encourage third parties to participate so that their manufacturers and service providers do not lose competitiveness in the US and EU markets. Others may be encouraged by the demonstration effect in seeing that new and innovative solutions can be found to difficult trade, investment and regulatory issues.

The US and the EU have in place many bilateral FTAs and are in the process of negotiating others, yielding separate arrangements with the same countries. Coordination of approaches in these negotiations could lead to higher ambitions on the outcomes, new strategic partnerships with third countries, and a strengthening of the multilateral system.

While progress in the traditional sense on the multilateral front in the WTO is problematic, the US and the EU should not abandon multilateral ambitions altogether. Together they should seek “coalitions of the willing” to reach agreements in such areas as services, the digital economy, and industrial sectors, all based on traditional principles of transparency, non-discrimination and national treatment, extended to those willing to accept the market opening and other obligations of the particular agreement. Furthermore, they should prepare the groundwork for negotiation of a global investment agreement at an opportune time in the future and in a forum most conducive to success.

Finally, the US and the EU with willing trade partners should negotiate best practice guidelines for regulatory and other issues that pose problems falling outside the normal concepts of trade and investment. The OECD, for example, has significant experience in developing best practices on regulation and other commercial matters. Agreements in these areas might prove attractive to governments that are not willing to commit to

binding obligations on new issues, but are willing to experiment with promising approaches that might prove pathways to more formal legal agreements in the future.

Concluding Observations

Mr. Chairman and Members of the Committee, thank you again for the opportunity to present some ideas on future directions in US international trade policy and negotiations. I have not addressed the Trans-Pacific Partnership negotiations, Russia's accession to the WTO, and other more immediate trade matters, all of which are worthy endeavors. Rather, I've tried to look ahead to a new agenda. My view is that focusing next on strengthening the transatlantic partnership, where we already have deep relationships and many common values, will set the stage for the next wave of progress on global trade expansion. This is important, because we know trade expansion can contribute significantly to growth, employment, cost-effectiveness and innovation – all of which are critical to the health of our economy here at home and to the global economy now and in the future.

Thank you very much.

Attachments:

1. "Forging a Transatlantic Partnership for the 21st Century," Joint Statement by the Business Roundtable and the TransAtlantic Business Dialogue, February 2012.
2. "A New Era for Transatlantic Trade Leadership," A Report from the Transatlantic Task Force on Trade and Investment (Excerpts), February 2012.

STATEMENT OF
JAMES H. QUIGLEY, SENIOR PARTNER, DELOITTE LLP
February 29, 2012

ATTACHMENT I

"Forging a Transatlantic Partnership for the 21st Century," Joint Statement by the
Business Roundtable and the TransAtlantic Business Dialogue, February 2012.



Forging a Transatlantic Partnership for the 21st Century
Joint Statement by Business Roundtable and the TransAtlantic Business Dialogue¹
(February 2012)

Overview of a New Transatlantic Partnership Vision

We welcome the new U.S.-EU High Level Working Group on Jobs and Growth and the U.S. and EU government leaders' declared intent for it to consider the full range of trade and investment measures that could be taken to revitalize and intensify our strong economic relationship. We are concerned, however, that absent a clear and compelling vision of a more strategic, dynamic and forward-looking partnership, the effort will not fulfill its promise.

We believe the vision should be to develop a new Transatlantic Partnership (TAP) to deepen the U.S.-EU economic relationship and to strengthen the international economic system and its rules and standards, thereby supporting innovation, economic growth, and job creation in the United States and the EU and around the world. This is not a time for piecemeal efforts; it is a time for transformative action and leadership. To further this vision, the effort should focus on, and integrate effectively, three core objectives: (1) renewing and opening more deeply the 21st century transatlantic market; (2) positioning our partnership so we can better both compete with and engage third countries on the fundamental rules underpinning 21st Century trade and investment; and (3) strengthening the WTO and deepening the multilateral commitment to open markets.

As CEOs and chairmen of businesses engaged across the global economy, we need nothing less. If we are to galvanize our companies and sectors to position our global ambitions around the opportunity represented by the new U.S.-EU High Level Working Group on Jobs and Growth, then it is self-evident that the strategic vision and structure will need to serve as a global template.

As business leaders on both sides of the Atlantic, we believe the renewal and further opening of the transatlantic market is important to reenergizing our economies and the global economy. We welcome all serious efforts to that end, and offer our support in realizing that goal. But in today's global economy we cannot afford to limit our ambition to a standard bilateral free trade agreement. On its own, such an exercise is insufficient to meet the broader economic challenges we face. This transatlantic partnership should advance an agenda for jobs and growth that opens transatlantic markets while simultaneously creating a dynamic environment to promote international cooperation to open global markets. Efforts to open transatlantic markets must be tied to joint efforts to strengthen the ground rules of the international economic system and to engage the emerging growth markets in a common effort to extend the benefits of open markets to their citizens and companies.

¹ Business Roundtable and the TransAtlantic Business Dialogue would like to acknowledge the assistance of Daniel S. Hamilton, Ph.D. in helping prepare this paper. Mr. Hamilton is the Executive Director of the Johns Hopkins University Center for Transatlantic Relations at The Paul H. Nitze School of Advanced International Studies in Washington, DC.

Why a Transatlantic Partnership and Why Now?

Even with the rise of other economic powers, including the emerging growth markets, the United States and the EU remain the fulcrum of the world economy, each other's most important and profitable market and source of on-shored jobs, each other's most important strategic partner, and the driving force in the multilateral economic system — when we work in concert.

The notion is mistaken that we can “go it alone” in trying to convince other countries to reject protectionist trade policies, forego discriminatory industrial and regulatory policies, and provide adequate and effective intellectual property protection. This can also lead to serious missed policy opportunities for the United States and the EU to raise the bar in terms of setting international norms and standards. Strengthening transatlantic bonds is important not only in terms of how Europeans and Americans relate to each other, but how we can harness the potential of the transatlantic partnership to open markets in other countries, especially the emerging growth markets, and strengthen the international economic system. In fact, the stronger the bonds among core market economies like the United States and the EU, the better our chances of being able to include rising economic powers as responsible stakeholders within an open international economic system.

Despite its strength and potential, the U.S.-EU relationship punches below its weight and fails to capitalize on significant opportunities for our citizens, companies, workers, consumers and the multilateral economic system we helped bring to life. The U.S.-EU relationship is widely perceived as a largely technocratic exercise, a grab bag of issues addressed in rather ad hoc fashion by a disparate range of institutions, with little sense of urgency or overall strategic direction – and better at expressing aspirations than delivering outcomes. Up to now it has failed to fire political, business or popular imagination.

Core Elements of a New and More Dynamic Transatlantic Partnership

We believe the vision for a Transatlantic Partnership (TAP) must encompass three core, mutually-reinforcing objectives. There will be a natural inclination to do what we all know best—focus quickly on the granular elements of either a standard bilateral free trade agreement or targeted sectoral trade, investment or regulatory negotiations. Achieving the core objectives will require careful and thoughtful engagement by our governments and private sectors. The U.S.-EU High Level Working Group on Jobs and Growth has created a unique opportunity for the United States and the EU to revitalize and reshape their relationship on both a bilateral and global scale; and this opportunity should not be wasted.

First, we must renew and more deeply open the 21st century Transatlantic Market. The goal of a renewed and open transatlantic market should not be just another “free trade agreement;” it should be a more ambitious and relevant new-generation accord, rooted in the distinctive nature and potential of the transatlantic partnership. In addition to being grounded in essential principles of WTO-consistency, transparency, and non-discrimination among the parties, it should advance synergistic strategies across a range of areas, from reducing barriers to transatlantic trade in goods and services, removing restrictions on job-creating investments, overcoming regulatory obstacles, boosting innovation, encouraging the flow of people and talent across the transatlantic space to addressing emerging 21st century issues like facilitating cross-border data flows which have become essential to global manufacturing and services operations.

- *The initiatives need to be structured and sequenced to achieve, to the maximum extent and as quickly as possible, each of the core objectives outlined in this paper.*

- *The initiatives (should be ambitious in eliminating trade, investment and regulatory barriers and distortions in promoting regulatory coherence and should result in commercially relevant new-generation accords.*
- *The framework needs to recognize that the U.S. and EU economies are so integrated that many of the remaining barriers and distortions are deeply embedded in our respective legal, policy and political structures and their resolution may not necessarily fit effectively into the negotiating structure of a new transatlantic agreement. Such issues run a high risk of deadlocking the negotiations, which would send a negative signal to other countries we are seeking to engage on a third party track. The U.S.-EU High-Level Working Group on Jobs and Growth therefore should integrate into its recommendations how the United States and the EU might use other mechanisms like the Transatlantic Economic Council (TEC) and how we can engage more effectively other key stakeholders, including legislators, regulators and standards setters, to move forward on issues that will require more extensive work.*

Second, we must reposition our partnership so we can better engage with third countries on the economic ground rules underpinning the multilateral system. Efforts to open transatlantic markets and lift and align transatlantic standards and regulatory regimes can – and must – drive broader international cooperation. The stronger our bilateral convergence, the more seriously third countries will respond and the greater the likelihood of making tangible progress in opening markets and ensuring a rules-based approach and norms. This is an opportune moment for such an agenda. The multilateral system administered by the WTO is under challenge, especially by emerging growth markets that have benefited substantially from the system. A number of rapidly emerging countries do not share the core principles or basic structures that underpin open rules-based commerce, and are now showing no real interest in new market opening initiatives. As a result, the global economy is drifting dangerously towards the use of national discriminatory trade, regulatory and investment practices.

The United States and the EU have used the TEC process to coordinate and align policy responses to certain actions taken by third countries that discriminate against transatlantic businesses. This joint effort has proven successful and should continue on a parallel track as the U.S.-EU High-Level Working Group on Jobs and Growth focuses on its work. In this regard, the United States and the EU must pioneer more dynamic and effective forms of transatlantic collaboration that provide new opportunities to reach out to the emerging growth markets to open their markets, to lift international standards, and to strengthen multilateral rules. Given the size and scope of the transatlantic economy, standards negotiated by the United States and the EU can quickly become the benchmark for inclusive regional and ultimately global models, reducing the likelihood that others will impose more stringent, protectionist requirements or discriminatory industrial and regulatory policies for either products or services.

The goal is not to build an Atlantic Fortress, but instead to pave the way for sustainable economic growth in the global marketplace. Europeans and Americans certainly share an interest in extending prosperity through open markets. Because of this, Europeans and Americans should forge ahead, identifying points of agreement on the elimination of traditional trade and investment barriers on regulatory norms and standards where they can, and using such agreement to engage third countries. Our chief goal should in fact be to make broader institutions work much more effectively, by seeking general agreement on goals and purpose before engaging in larger fora, thus supplementing rather than supplanting such bodies.

- *The new U.S.-EU High-Level Working Group on Jobs and Growth needs to factor into its planning the important fact that the United States and the EU have concluded many bilateral free trade agreements and are moving forward with new agreements with a special emphasis on modernizing them to tackle pressing 21st Century issues such as trans-border data flows, discriminatory industrial policies and state-owned enterprises. The United States is*

pursuing the Trans Pacific Partnership (TPP), while the EU is concluding a Comprehensive Economic and Trade Agreement with Canada, has ongoing negotiations with India, Mercosur and others, and may start negotiating a deal with Japan.

- *In this growing web of economic integration, there is a glaring hole the U.S.-EU High-Level Working Group on Jobs and Growth has to recognize and develop a strategy for filling. The free trade agreements negotiated by the United States and the EU overlap considerably. Under these circumstances, the U.S.-EU High-Level Working Group needs to develop a negotiating framework that will promote alignment of these agreements and an opportunity for new countries to join in the newer arrangement.*
- *Alignment, such as reconciling different rules of origin, would enhance the economic growth and job creation benefits of the agreements by reducing transaction costs and the burden of complying with different sets of rules that companies and their workers must navigate.*
- *The alignment process could also create a dynamic environment in which it might be possible to draw some of the emerging growth countries who do not have free trade agreements with either the EU or the United States into an agreement. This dynamic appears to be working in the TPP where Malaysia and Vietnam have already become parties to the negotiations, and Japan, Canada and Mexico have now all asked to join the negotiations. Given the unfortunate deadlock in the WTO Doha negotiations, creating such a new dynamic could be a major boost to creating a stronger and broader commitment to open markets.*

Third, we must strengthen and deepen the commitment in the WTO to open markets and extend the rules-based multilateral system to include new areas of commercial opportunity. Commercial barriers must come down not only across the Atlantic, but around the world too. We remain committed to the multilateral trade liberalization agenda under the auspices of the WTO. Yet we should also explore opportunities that give us more viable options than moving the global economy ahead in lockstep or not at all.

In addition, the United States and the EU should work together and with other like-minded partners to extend the rules-based multilateral system to new areas of endeavor. Most new cooperative economic arrangements today address issues beyond traditional “at the border” barriers to trade in goods and services as originally formulated by the GATT and GATS. New guidelines are needed to apply such fundamental WTO principles as transparency, non-discrimination between the parties, and national treatment to international economic transactions ranging far beyond the traditional trade agenda.

Those who worry that an ambitious Transatlantic Partnership could threaten the multilateral economic system should not be concerned by this new transatlantic initiative. They should consider that the opposite may be true. In fact, how the United States and Europe deal with the interrelated challenges and opportunities posed by bilateral issues, rising powers, and overlapping networks of FTAs could go far to shape the multilateral agenda for a new age and ultimately strengthen the multilateral system, especially the WTO.

In this sense, transatlantic markets have become the laboratory for the international trading system; many transatlantic issues cannot be addressed by multilateral efforts alone. That is why the “multilateral versus transatlantic” dichotomy is a false choice. The United States and the EU should advance on both fronts simultaneously: push multilateral liberalization and press transatlantic market-opening initiatives in areas not yet covered by multilateral agreements. The alternative to this WTO+ agenda is not drift; it is growing protectionism, U.S.-EU rivalry in third markets, and the triumph of lowest-common-denominator

standards for the health and safety of our people. The absence of common rules and procedures weakens the leverage of our two regions to ensure that high standards prevail.

- *The U.S.-EU High-Level Working Group on Jobs and Growth should begin to develop ideas on how existing and future U.S. and EU agreements could be used to strengthen and deepen the WTO's commitment to open and non-discriminatory markets.*
- *For example, consideration should be given to using these agreements to develop non-binding "best practices," like the EU-U.S. ICT Principles, which could be promoted within the WTO to guide countries on how to create a more effective trade, investment and regulatory environment for growth and job creation.*
- *In addition, the United States and the EU should explore how they could use the TAP and TPP to promote plurilateral negotiations under the auspices of the WTO whereby non-party WTO members could dock to either or both of these agreements or work together to merge these and/or other high standard bilateral and regional trade agreements.*
- *Ultimately, the goal would be to try to use these types of initiatives to reinvigorate the overall commitment in the WTO to negotiate new multilateral agreements that are more relevant to the global economy in the 21st century.*

Conclusion

The U.S.-EU relationship remains the foundation of the global economy and the essential underpinning of a strong, rules-based international economic order. We literally cannot afford to neglect it. Instead, we need to put our partnership to work – to open our markets; to engage the emerging growth countries; and to strengthen global rules. A 21st Century Transatlantic Partnership is within our grasp, but it is not the relationship we have today. Given the challenges we face, such a partnership is urgent. We are committed to working with U.S. and EU government leaders and others in the business community to create a new and more effective transatlantic partnership that supports economic growth and job creation.

STATEMENT OF
JAMES H. QUIGLEY, SENIOR PARTNER, DELOITTE LLP
February 29, 2012

ATTACHMENT 2

"A New Era for Transatlantic Trade Leadership," A Report from the Transatlantic
Task Force on Trade and Investment (Excerpts), February 2012



A NEW ERA FOR TRANSATLANTIC TRADE LEADERSHIP

A Report from the Transatlantic Task Force on Trade and Investment

FEBRUARY 2012

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of the United States
STRENGTHENING TRANSATLANTIC COOPERATION



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TASK FORCE ON TRADE AND
INVESTMENT***

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*This report represents the views of member of the Task Force but not necessarily their affiliated organizations.

THE TRANSATLANTIC TASK FORCE ON TRADE AND INVESTMENT

IN MAY 2011, the European Centre for International Political Economy (ECIPE) and the German Marshall Fund of the United States (GMF) launched the Transatlantic Task Force on Trade and Investment, a major trade-policy initiative to spur greater leadership on future trade policy by Europe and the United States. Since the launch, a high-level group of recognized international trade scholars and practitioners from academia, business, civil society and public policy have convened with the purpose of releasing a report with recommendations for transatlantic policymakers. Four “think pieces” written for the Task Force have been published in this project.

Co-chaired by Ewa Björling, the Swedish Minister for trade, and Jim Kolbe, a former member of the U.S. Congress and a Senior Transatlantic Fellow with the GMF, the Task Force was set up at a difficult time for trade policy. Overall, trade policy in the EU and the U.S. is fighting against diminishing expectations and general fatigue with the global trade talks. The 2008 financial crisis, and the ensuing euro crisis, as well as prior global economic trends, have also shown how trade links up with many other central economic issues – and how crude mercantilist notions, yet again on the rise, are badly suited to guide an effective trade policy intent on boosting economic growth and job creation. In addition, the rise of Asia has eroded the trade leadership role played by the transatlantic partners in the past decades, without anyone else taking up the fallen mantle. Against that backdrop, the Task Force’s goal was to define what role there is and should be for transatlantic leadership for trade policy in the near-to-medium term future.

Base funding for this Task Force was generously granted by the Swedish Ministry of Foreign Affairs. Additional funding has been provided by ECIPE, the German Marshall Fund of the United States, the CN70 Foundation, the Confederation of Swedish Enterprise, and the U.S. Chamber of Commerce.

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INTRODUCTION

THE QUEST FOR growth and jobs currently dominates the political agenda on both sides of the Atlantic. At a time of fiscal and monetary policy constraints, trade liberalization can help jump start the transatlantic economy and create new economic opportunities in both Europe and the United States. Through such efforts, Washington and Brussels can give fresh blood to increasingly anemic ambitions for global trade liberalization.

There could hardly be a more appropriate time than now to engage in a discussion about the strategic trade-policy choices facing American and European trade policymakers. The economic challenges confronting the two continents are daunting. Economic forecasts are discouraging. Both Europe and the United States are likely to experience slow growth in the next five years, perhaps even longer. Unemployment is likely to remain high. Public finances will have to be stabilized and debt levels need to come down from their current heights. Moreover, many European countries will soon experience significant demographic changes that will put pressure on their pension systems and fiscal policies, especially as the demand for healthcare services increases with an ageing population.

Events in 2011 have again taught us that a lack of effective political leadership in the European Union and the U.S. threatens economic recovery and growth. If the crisis in the Eurozone worsens, and if the United States replays the 2011 debt limit and payroll tax debacles, economic prospects will only worsen. A breakup of the Eurozone would throw Europe into economic turmoil, with repercussions for the entire world economy.

The enormous economic challenges facing the EU and the U.S. lead some to advocate a pause in, or a retreat from, the long march toward freer trade. We are of the opposite view. New trade and investment initiatives between Europe and the United States should become a strategic part of any effort to create growth and jobs. In times of fiscal austerity and limited monetary

policy options, more open trade and investment policies designed to maximize economic gains are among the most important instruments that governments can utilize to stimulate growth.

The Transatlantic Task Force on Trade and Investment was brought together by a desire to help shape a transatlantic policy agenda both for bilateral trade policy and for joint leadership in the global trading system. New trade and investment policy strategies are needed in order to respond to the large structural changes underway in the world economy. Unfortunately, the Doha Round of trade negotiations at the World Trade Organization (WTO) has completely stalled, failing to produce the desired results after ten years of discussions. Since the Doha Round was not concluded at the WTO Ministerial meeting in December 2011, there is no better time than now to consider realistic options for moving forward with a new bilateral and multilateral trade agenda.

New strategies should build on the principles of openness to trade and a commitment to market economics that were enshrined in the international economic organizations crafted jointly by Europe and the U.S. after the Second World War and that have served the world so well since then. It is true that the rise of Asia and other emerging economies has changed the structure of world economic power. But rapid economic growth in the non-Western world has only strengthened the case for an open and rules-based trading system that adapts itself to new products, new innovations and new markets. A multilateral trading system makes increasing sense as the recently finished accession negotiations with Russia and other countries have demonstrated. International trade has probably never enjoyed such widespread support, at least in theory, as it does today. Yet the capacity of trade policymakers to transform this spirit into a more open, deeper and wider set of multilateral trading rules has greatly diminished. Indeed, there is a substantial risk that the strength and utility of the current multilateral system will erode over time unless the

most powerful countries in the global economy successfully change the dynamics of world trade policy and politics.

The postwar march toward a more open and market-based trading system has always progressed both inside and outside the framework of multilateral trade negotiations. The strategies and tactics of trade policy leaders of the past have always been more diverse and complex than what is acknowledged by trade purists and ideologues. Arguably, new dynamics – new “positive tensions” – in global trade policy will have to be generated by a combination of endogenous changes within the WTO and exogenous pressures that provide the incentive for the world’s most powerful and important economies to press ahead with additional trade liberalization and more extensive and updated rules. Unleashing such positive tensions in order to put pressure on WTO members from outside, while still continuing to find ways to work constructively from the inside, should be a critical part of the transatlantic strategy today.

In this report, the Transatlantic Task Force on Trade and Investment provides an overall analysis of the current state of transatlantic trade policy and makes recommendations for joint action by the European Union and the United States. The report focuses on initiatives that should be taken by these two long-standing partners in global economic policy making. Other recent studies have examined trade policy from a more general and systemic perspective, and presented recommendations about how the WTO in particular should change in the future from a structural and an operational point of view.¹ While some of these issues are also addressed in this report, our views are more specifically directed to transatlantic policymakers and leaders. The task we set our-

selves was to think strategically about EU and U.S. trade policy choices in the transatlantic context. This report therefore suggests some ambitious initiatives that can lead the way forward. It presents concrete recommendations for consideration by the EU and the U.S. together as they continue to formulate and refine their trade policy agendas in the years ahead, always with an eye toward enhancing economic growth and job creation.

Indeed, we are encouraged that a new process in this regard has recently been launched. At the U.S.-EU summit in late November last year (2011), the EU and the U.S. agreed to establish a High Level Working Group for Jobs and Growth to generate new ideas for transatlantic trade policy. This major initiative shows political leaders are now prepared to revisit the arguments for and against transatlantic bilateral trade initiatives. While we support both deepened bilateral trade integration and greater transatlantic cooperation at the multilateral level, it is critical for the High Level Working Group that new bilateral and multilateral initiatives are integrated with each other. EU and U.S. leaders have now acknowledged that a transatlantic trade agreement is no longer a forbidden territory for them. However, the capacity of such an agreement to generate positive systemic consequences, and improve conditions for trade beyond the Atlantic region, depends on the design of a transatlantic trade agreement and how it links up with common EU and U.S. initiatives with other countries. That should be an essential element in the work by the High Level Working Group.

This Task Force report is based on four fundamental assumptions:

- Europe and the United States are still the two main leaders in global economic policy-making, and will remain so for the foreseeable future. Even if other countries are catching up fast, especially populous countries like India and China that already have significant trade sectors, no other jurisdictions possess the requisite economic, political and institutional ca-

¹ “The Future of the WTO – Addressing institutional challenges in the new millennium” (2004) Report by the Consultative Board to the Director-General Supachai Panitchpakdi by Peter Sutherland (Chairman), Jagdish Bhagwati, Kwesi Botchway, Niall FitzGerald, Koichi Hamada, John H. Jackson, Celso Lafer and Thierry de Montbrial. World Trade Organization; The Warwick Commission (2007) “The Multilateral Trade Regime: Which Way Forward”, University of Warwick

capacity, nor the desire nor the will that is necessary to provide global leadership.

- There is already a high degree of transatlantic economic integration as a result of past and existing trade and investment flows in both directions. Nevertheless, it should be a priority for the transatlantic relationship to move to a genuine barrier-free market. This is a bold vision, yet it could and should guide policymakers in their actions today. The transatlantic economic relationship is among the most intense and intertwined in the world. Yet it should not be taken for granted. Transatlantic policy apathy, or neglect, will deprive both Europe and the United States of viable strategies to boost growth while undermining efforts to get others to open up markets for the good of all countries.
- A sound multilateral trading system remains key to world and transatlantic prosperity, and the central role of the WTO in that system should be preserved. System maintenance is essential. However, the focus for the time being should be on finding pragmatic approaches to trade liberalization and rules-making that can actually achieve something in the years ahead. Incremental progress is preferable to continued failed attempts at any grand redesign or reform of the system. Europe and the United States have the capacity to shape a realistic agenda – jointly and in cooperation with other key partners. Now is not the time for trade-policy fatigue. It is rather time for a comprehensive trade strategy to renew efforts to open up markets for greater commerce, growth and more jobs – both at home and in other countries.

- Preferential Trade Agreements are now important parts of trade policy. Almost all countries have a significant number of PTAs on their books and are engaged in negotiating new agreements. While the quality of PTAs could be improved, a critical challenge for the EU, the U.S. and other leaders in global trade is to find ways to integrate and harmonize existing PTAs.

We decided early on to place two limitations on our work. First, we concluded not to try to cover all issues of significance in trade policy. We have put the emphasis on strategies that arguably stand a chance of having an impact in the near-to-medium-term future. There are many issues other than those addressed in this report that are worthy of commentary and policy attention. The chief task now, however, is to restore a belief in trade policy and its capacity to deliver meaningful gains to societies. That requires a focus on achievable deliverables.

Second, the purpose of this report is to set out new initiatives – but not to prescribe the nuts and bolts of each initiative or how they should come about. That is a job for policymakers and negotiators. Our recommendations and judgments – based on the collective experience represented on this Task Force – are limited only to suggesting trade agendas and trade strategies to be pursued in a transatlantic context and not how they can best be implemented.

The next chapter will give a general analysis of changes in the international trading system and how those changes have prompted us to call for a new transatlantic trade agenda. Our recommendations, and the motivations for them, are presented in chapters three and four. The report concludes with a summary.

OUR RECOMMENDATIONS

TRANSATLANTIC LEADERSHIP IN the global economy can make a huge contribution to the promotion of economic growth and jobs. Recent changes in the structure and operation of the world economy have transformed the underlying geo-economic and political conditions for the formulation and conduct of international trade policy. Moreover, the seemingly permanent impasse in the Doha Round has forced countries to consider alternative strategies for advancing their trade interests and for generating new momentum for global trade liberalization.

Notwithstanding the growing economic power of the emerging economies, the European Union and the United States remain giants of the world economy and the global players still best equipped to provide global economic leadership. It is therefore imperative that they find ways to demonstrate to the international community that they are prepared to continue to spearhead global trade initiatives for the benefit of all countries. A key theme of this report has been the need for the U.S. and the EU to take action to deepen transatlantic trade policy cooperation in order to provide the foundation for greater bilateral and multilateral economic integration. This, in turn, will help lead the way to improving conditions for global trade.

In this report, we have set forth a number of what we believe are realistic and pragmatic policy recommendations that are achievable over the short and medium term (5-8 years). These recommendations flow from our collective belief in the need for a deep and comprehensive transatlantic trade and investment policy agenda and our judgment that implementation of such an agenda can lead to significant economic gains. Equally important, renewed transatlantic trade and investment policy cooperation has the potential to create new political momentum for global trade liberalization after years of stalemate.

A transatlantic trade and investment policy agenda should promote economic growth and the creation of jobs. It should improve the con-

ditions for commercial exchange, and have as a longer-term vision the establishment of a barrier-free transatlantic market. Transatlantic cooperation should also simultaneously strive to promote and support the rule-based WTO system for international trade. High-level commitment from political leaders is a prerequisite to achieve the goals of an enhanced transatlantic cooperation agenda. Collaboration with the private business sector and other private stakeholders is also essential.

In light of the above, and by way of conclusion, we briefly recap our recommendations below.

MOVING TO A BARRIER-FREE TRANSATLANTIC MARKET

A new bilateral agenda

The U.S. and the EU should pursue a new agenda with the long-term ambition of creating a barrier-free transatlantic marketplace by liberalizing trade in goods and services, effectively addressing non-tariff barriers, and creating a secure and predictable environment for investment. While it is recognized that this goal cannot be achieved immediately, there are a number of useful steps that can and should be taken over the short- to medium-term that will materially contribute to the achievement of this longer-term goal.

A new stakeholder driven bottom-up initiative on tariffs and NTBs

Bilateral work on eliminating tariffs and addressing non-tariff measures should proceed based on decentralized government consultations with business associations, labor unions, consumers and other stakeholders from both sides of the Atlantic. The ambitious agenda should be based on the principle of zero for zero tariff elimination and a sectoral approach to NTBs. The aim should also be to put into place a mechanism to avoid future regulatory divergences.

Liberalizing trade in services

Improving trade in services is critical for transatlantic economic relations. The U.S. and the EU should negotiate liberalization of trade in services with coverage based on a negative list approach and flexibility provided to negotiate more detailed sectoral agreements as annexes to a framework agreement.

Transatlantic cooperation on Preferential Trade Agreements (PTAs)

The EU and the U.S. should cooperate to integrate, expand and modernize their existing and future PTAs. An integration and consolidation mechanism should be established to provide a way to analyze the substance of existing and future PTAs and possibly harmonize them into a larger agreement.

A comprehensive transatlantic investment agreement

The EU and the U.S. should lay the groundwork to launch negotiations on a transatlantic investment agreement at an appropriate time in the future. The political decision to launch negotiations should be based on a mandate for policymakers to negotiate a deep and comprehensive investment agreement, which improves market access for foreign investors by removing existing restrictions. It should assure non-discrimination of foreign investors, free transfers and protection in case of expropriation. It should also include provisions on procedures for state-investor dispute settlement. An investment initiative is particularly timely given the centralization of EU investment policy as a result of the entry into force of the Lisbon Treaty.

A transatlantic agreement on government procurement

The U.S. and the EU should negotiate a bilateral government procurement agreement that would go beyond what was recently agreed at the WTO Ministerial Meeting in December 2011.

A NEW AGENDA FOR MULTILATERAL TRADE AND INVESTMENT POLICY

Transatlantic leadership on multilateral trade policy should be asserted primarily through joint initiatives at the WTO with the aim of successfully reviving the utility of the WTO as a negotiating forum and ensuring that the WTO continues to serve the evolving needs of its membership over the longer term. Joint EU-U.S. leadership can contribute to supporting and promoting the rules-based international trading system based on the principles of non-discrimination and transparency. The longer-term goal should also aim to 'multilateralize' bilateral or plurilateral agreements by incorporating the trade liberalizing features of these agreements into the WTO.

Plurilateral And Sectoral Initiatives

To advance the multilateral agenda, plurilateral and/or sectoral agreements should be concluded among coalitions of the willing. Such agreements will provide new market access at a minimum to the signatories, but remain open for all countries to join according to agreed conditions. Whether the market access that results from these negotiations should be extended on an MFN basis will depend on the composition of the groups of countries pursuing individual negotiating initiatives and the subject matter involved.

Sectoral agreements in goods

The EU and the U.S. should actively explore concluding sectoral agreements in the goods sectors, particularly in those sectors where many countries would be willing to participate. The work should be based on a bottom-up approach, taking into account input from stakeholders.

Progressive market access on trade in services

The EU and the U.S. should work jointly to launch a plurilateral agreement on services. If it is not possible to achieve an agreement that covers all relevant aspects of GATS, negotiations could proceed to plurilateral sector agreements

along the lines of what was previously done in telecommunications and financial services.

Agriculture: still a critical issue!

Notwithstanding the difficulties encountered on agriculture in the Doha Round, we encourage the U.S. and the EU to take the lead in continuing negotiations on agriculture in the WTO with the aim of improving the conditions for market access and reducing trade-distorting agricultural subsidies. The use of export subsidies should cease. Countries should also refrain from using food aid as a means to promote exports. Subsidies and non-tariff barriers should also be reduced.

Expanding the Government Procurement Agreement (GPA)

We applaud the recent breakthrough in the WTO to update and expand product and entity coverage under the GPA. We urge the EU and the U.S. to keep the pressure on China and other emerging countries to join the GPA.

Improve trade facilitation in the interest of all

Trade facilitation can lower trading costs to the benefit of all. The irony is that talks about an agreement in trade facilitation have not yet concluded successfully despite the fact that everyone would stand to benefit from it. If an agreement on trade facilitation cannot soon be reached within the framework of the Doha negotiations, we believe the EU and the U.S. should undertake an initiative to reach a plurilateral agreement with interested countries in the WTO on trade facilitation.

Fostering economic development in LDCs

The EU and the U.S. should offer full duty-free and quota-free market access to the least developed countries in the world and encourage the emerging economies also to offer improved conditions for market access to the LDCs.

Strengthen the Trade Policy Review Mechanism

We applaud recent steps taken in the WTO to strengthen and expand the use of the TPRM in order to increase the transparency of the system and to ensure compliance by members with their WTO obligations. We urge the EU and the U.S. to work together to ensure that these recent steps are effectively implemented. Consideration should be given to giving the WTO Director General additional powers to address cases of continuous violations by members of their obligations. The EU and the U.S. should also step up their cooperation with respect to initiating and carrying out dispute settlement proceedings, and also set a positive example for other members by complying on a timely basis with all adverse WTO rulings against them.

Learn from Preferential Trade Agreements

The EU and the U.S. need to encourage the WTO to explore ways to incorporate into the WTO system the liberalization and trade advances achieved through PTAs. The long-term objective should be to 'multilateralize' the trade liberalization initiatives that have been taken at a bilateral or plurilateral level.

Communicate with the business community and other stakeholders

The EU and the U.S. should ensure that the private sector is invited to participate more actively in trade policy-making so that policies reflect their practical concerns. Their experience and input are valuable to policy-making, and their hands-on knowledge should be taken into account to a greater extent in the design of future policy and regulations.

An improved and coherent global investment policy

Additional research and analysis must be undertaken in order to improve knowledge and understanding about global investment issues. On the basis of this work, the U.S. and the EU

should jointly prepare a document laying out suggested principles for investment policy, while awaiting the proper moment to advocate a global investment agreement. The EU and the U.S. should also seek to develop and share guidelines and best practices between governments with the aim of improving market access, transparency and non-discrimination for foreign investors.

Improve enforcement disciplines on subsidies and SOEs

Documentation and reporting on the use of subsidies worldwide should be improved and WTO disciplines over the use of trade-distortive subsidies should be strengthened. Possible disciplines over trade-distortive behavior by state-owned enterprises should also be developed. The U.S. and the EU should also cooperate more closely to enforce existing WTO disciplines on subsidies and state-owned enterprises by bringing joint cases to the WTO.

CONCLUDING OBSERVATIONS

THE TRANSATLANTIC TASK Force on Trade and Investment believes that deeper economic cooperation across the Atlantic will promote growth and create jobs in the EU and the U.S. Determined and effective transatlantic leadership can lead to the successful negotiation and implementation of bilateral initiatives that will increase bilateral trade and investment flows and also create new momentum for enhancing cooperation within the multilateral trading system, thereby strengthening the WTO, both as a negotiating forum and as a guardian of the rules-based international trading system. The United States and the European Union can play a necessary and unique leadership role in promoting economic welfare both within the transatlantic marketplace and worldwide.

Mr. BRADY. Thank you, Mr. Quigley.
Mr. Wolff, welcome.

**STATEMENT OF ALAN WOLFF OF COUNSEL, DEWEY &
LeBOEUF LLP**

Mr. WOLFF. Thank you very much, Mr. Brady, Mr. Levin, Congressman Camp, other Members.

I started my education on trade in this room 42 years ago, and it is continuing today.

I have for the record a longer written statement plus an attachment from the National Foreign Trade Council on trade objectives going forward.

A couple of points I would make at the outset. One is we have come through a major financial crisis and recession without the trade world collapsing, so actually our trade agreements work in a broad sense.

We have heard a lot about complaints today, and we have a lot of complaints, but in fact, overall, protectionism has not surged, which is amazing.

We have a negotiation underway in TTP (the Transpacific Partnership), which is really very vibrant. It is a great opportunity. It may be very well the template for all future trade agreements.

We have a positive development with the President's initiative with respect to trade agreement enforcement, which we hope works out well.

You, Mr. Chairman and Ranking Member Levin, have introduced legislation to fix a hole in our countervailing duty law with the Court making a mistake in the GPX case. The amendment would allow the commerce department to countervail, again, against subsidies from China.

The rest of the story is far more troubling. The point I would emphasize most is the role of state owned enterprises in international trade. It has been brought up by several Members today.

In this regard, most of the examples that are mentioned are from China. Wind energy equipment of foreign companies declined in sales in China from 75 percent of the market to 10 percent of the market in 5 years, 2005 to 2010. The causes of that decline were first that the purchasers were state owned enterprises but there were a variety of other measures.

State owned enterprises are not only a China problem. Chairman Camp and Mr. Price mentioned that Japan continues to be a significant problem with respect to the ability of Americans to sell financial products. There is discriminatory regulation. There is no level playing field. These factors also affect express delivery services.

If we do not cure the problem with Japan Post, we will have the same problem in India, we will have the same problem in China, we need to cure the state owned enterprise problem, and TTP as Ambassador Kirk mentioned has a chapter which I am told looks very good in this regard.

Services negotiations. Brad Jensen for the IIE estimates that there are three million additional jobs in business services that would occur if we can open up foreign markets.

We have a lot of problems with respect to information technology that Mr. Krzanich mentioned, and cross border data flows. Food security is being addressed in the wrong way in Geneva by countries wishing to put on more export restrictions rather than fewer.

We have dead letter provisions in the GATT. The currency provision (GATT Article XV) not used. The transparency provision (GATT Article X) is not really used. The TRIPs, (Trade Related Intellectual Property) provisions, are not effective because performance is not measured in results, it is measured in process. Process is not good enough.

We are losing many billions of dollars as you all know with respect to losses due to loss of protection of IP under TRIPs.

We need to reinvigorate the WTO. We need to make sure TPP lands safely as soon as possible.

I would like to make a pitch since most Republican candidates at least, (I am not sure the President does) carry the Constitution in each of their pockets, that Article I states that actually the buck starts here, and trade promotion authority, I think, has to be made permanent, and the debate to do so should start now. The guidance as to what is to be done with it has to come from this Committee.

You in this Committee and in this Congress have to set the objectives, and I think you should set them every 4 years for every Administration.

There is a lot to be done with respect to trade law enforcement, and in my remaining 5 seconds, I would just say we do not have the intelligence and analytical capability devoted to foreign trade barriers that allow us to set trade policy correctly or trade negotiation objectives correctly.

We are operating in the dark, and we need to put resources into understanding the barriers that American exporters face.

Thank you very much.

[The prepared statement of Mr. Wolff follows:]

AMERICA'S TRADE POLICY AGENDA
And
THE FUTURE OF U.S. TRADE NEGOTIATIONS

Testimony before
The House Ways and Means Committee
Alan Wm. Wolff
Chairman, National Foreign Trade Council
Of Counsel, Dewey & LeBoeuf
Washington DC
February 29, 2012

The United States has benefitted from an economy that is second to none -- in its vibrancy, its innovativeness and its productivity. It has created an industrial base that preserves our national security and our national well-being. Trade policy should first and foremost strengthen the capabilities the nation has and improve on them. U.S. trade policy cannot be based on chance, neither operating in the dark nor without a strategy. This Committee's hearing notice recognizes these needs.

I have been asked to concentrate my oral presentation on the enforcement of trade agreements and will do so. My comments on trade law enforcement are drawn from my own experience from service in government as USTR General Counsel and Deputy U.S. Trade Representative, in private international trade and investment law practice, in conversations with those doing business in China and in my continuing research. My comments on U.S. trade negotiation priorities are not only my own views but very largely shared by the members of the National Foreign Trade Council, whose Board I chair.

Compliance with the black letter of the WTO rules

The record is very good. Much of the world went through a period of severe financial crisis and unacceptably high unemployment, rioting in Athens, and tent cities in downtown DC parks and not a single tariff commitment was breached, not a single safeguard action was brought, not a single prohibited export subsidy was granted by a major industrialized WTO member. There was no marked upswing in the number of antidumping cases filed which had

been feared by WTO Director General Pascale Lamy. And on top of that, as opposed to the period of the Great Depression, there were no competitive depreciations although the rates of appreciation of currencies of concern may have slowed.

It is true that some major emerging market countries such as Brazil and India do not have full commitments under the WTO, have not bound their tariff rates at reasonable levels, but that is a failure of negotiations not enforcement.

And in China, it is possible to go into court in Beijing and Shanghai and get enforcement of certain intellectual property rights such as copyright infringement of a major brand, under laws that not very long ago did not exist.

So, in a gross sense, trade agreement enforcement, really in most cases self-enforcement, has been positive. There have also been some clear U.S. enforcement wins under the WTO since its establishment in 1995. The Chinese government withdrew a discriminatory rebate of a value added tax on semiconductors when the U.S., the EU, and Mexico challenged it. China also dropped an antidumping case against the U.S. paper industry when imposing a duty would have been contrary to the WTO rules and did not impose mandatory technology transfer in connection with a wireless LAN standard (WAPI) after strenuous opposition from the senior levels of the U.S. government.

As a side note, but an important one, the United States has through a recent erroneous court decision stripped itself of the ability to offset, that is, to countervail, against Chinese subsidies, despite the WTO rules permitting these offsetting measures. The problem is one of our own making and the cure is simple, restore the U.S. countervailing duty law. We are not even availing ourselves of our full WTO rights in this respect. But it is within our power to fix this and we should do so promptly.

That is the good news. The rest of the story is far more troubling.

For a number of countries, almost every gap in coverage of firm unambiguous WTO commitments is being exploited to distort trade and investment. While market forces play a greater role in world trade than ever before, mercantilism has not been banished. The permitting of investment has become a common means to extract technology transfer. E-commerce and transborder data flows are being impaired. Breaches of cyber-security have become a means for stealing technology and business secrets. Competition laws are threatening intellectual property rights. Whole new areas of commerce -- cross border data flows, e-business, advanced business services are not yet the subject of international trade commitments allowing this trade to expand without unwarranted interference. At the same time, the evolution of technology has rendered increasing obsolete past trade liberalization commitments. Local content requirements in many countries have become the norm rather than the exception. The results of WTO trade litigation are at best uncertain and the progress toward putting new multilateral rules into place has not just stalled, it gives every indication of being sidelined for years to come.

Major failings of U.S. enforcement of trade agreements

1. The first deficiency: Lack of good trade intelligence and analysis. The first and foremost requirement for making U.S. trade policy is to understand trade patterns – where trade flows and where it doesn't and why it does not. U.S. exports are expanding, but what intelligence and analysis do we have on what causes the movement across borders of goods, services, and data? What prevents it? We have been too complacent that market forces will determine all outcomes. But many markets are rigged, they are anything but open. Large wind energy projects in China stopped buying foreign companies' wind turbines. Solar panels sold worldwide are increasingly sourced primarily in China. More obvious, half the world's large commercial aircraft are European – and they are very good. Were these simply examples of the free market operating? Of course they were not.

When we assess the effectiveness of current trade law enforcement, for a variety of reasons we look to the record of dealing with problems with China. This is true for a slew of reasons, but the major one is that China is the most rapidly growing large economy, as Japan's was a third of a century ago, that similarly we have a very large trade deficit with China, and because economic organization is in many respects different from our own. The Chinese government has announced that it wants to be predominantly self-sufficient in a range of leading-edge products. We do not have stated goals for industrial self-sufficiency in commercial products. China employs trade and investment measures that largely we do not. And we don't like some of the numbers that we see.

U.S. exports of manufactures grew by 12 percent in 2011, but Chinese exports were up by 20 percent. As a result, Chinese global exports were 57 percent larger than U.S. exports, and on track to double them by 2015. The U.S. deficit rose by \$48 billion, or 12 percent, and the Chinese surplus soared by \$125 billion, or 23 percent.¹

By no means is most of this due to inadequate trade agreement enforcement or the absence of effective trade rules, but some of it is. Does any of this matter? Did we see any of this coming or do we have a clear estimate of the direction that may be taken by China going forward? Where is our trade intelligence capability? How good is it? In fact, it is sadly deficient. We are largely operating in the dark.

We appear to have made a start in the right direction with the creation of a trade agreement enforcement task force announced by the President in his State of the Union Message. It is just a beginning. What is needed is a sustained effort spanning years. So we must not expect too much immediately from this initiative, promising as it may be. Committing resources to understanding where the trade enforcement problems lie and what rules might be applicable is at least one first good step.

2. The second deficiency: the need for a private complainant. In our political system, fixing problems when those directly involved have not complained is a thankless task. It is a

natural outgrowth of our domestic legal system -- that the United States is a democracy and a republic and has a generally free market system. Our courts do not operate without a case or controversy presented to them. There are plenty of inequities in the international trading system, but they are by and large only addressed by the U.S. government when a company or industry comes forward and complains. Our international trade law enforcement is therefore almost wholly "in-box driven", imbuing it with a degree of randomness.

The market access problems of China stand in stark contrast to those we had with Japan. China invited in foreign companies, Japan excluded them. Foreign companies are often making profits or hoping to do so in China -- the largest most rapidly growing market in the world. Their investments may receive locational incentives, as they do in American states or in Ireland. China has become a major source of supply and a major part of an intricate production supply chains. Companies are generally reluctant to sue their major customers, current and future, or for that matter the suppliers on whom they depend. Private companies would consider any positive inducements granted by China as none of the U.S. government's business, and "forced" technology transfer is either something they manage on their own or resist. Companies, depending on the desirability of their technology, have different levels of bargaining power. Companies within an industry and different industries face different problems. Some may face bids whose selection criteria are skewed to prevent foreign companies winning and others may not. A balance of business interests needs to be calculated by each company and trade association. The rule of law is far from perfect in China neither is its economy completely market driven. China is a one-party state, where compliance with government wishes can be rewarded and noncompliance penalized. It is in a sense a "license raj", with numerous requirements for government approvals for conducting business. While China's governance is not monolithic, there is likely some connection between a company getting a license to expand a plant and the its compliance with what may be taken as the requirements of good citizenship, for example in not challenging treatment that is seen by it to be unfair. Divulging bid criteria may be a revealing a state-secret, punishable by imprisonment.

Independent U.S. government intelligence gathering and analysis can at least illuminate somewhat why trade and investment patterns are the way they are, but they do not remove the principal inhibiting factors to action -- the absence of vital sources of information from victims of unfair practices and the absence of domestic support for government action. This leaves the U.S. government in many cases hamstrung, as it was for decades in dealing with European subsidies for the development of large commercial aircraft. The circumstances in Europe were very different in most respects from those that characterize issues in China, but they share the essential element of U.S. companies' self-determination of company self-interest.

It is important not to paint this picture in black and white. It is multicolored. It is not just state interference or threats that change investment patterns or make necessarily tolerable China's, India's or Brazil's excessive state intervention. Investment location may be determined by the presence of a needed talent pool, a lower cost base, more favorable tax treatment, a need

to be near to an important end-market, and in some cases the availability of superior infrastructure. Any or all of these factors may be far more important in a decision on locating production. So, again, there is a calculus applied. It would be a mistake to blame multinationals too quickly for finding that there are reasons not to file a formal complaint of a foreign government's objectionable conduct. Many of us might reach the same conclusions were we sitting on the boards of these companies rather than sitting here considering U.S. trade enforcement policies.

3. The third deficiency: dealing with the challenge of state capitalism.

The WTO as an effective regime depends upon the assumption that in the main competitive outcomes will be governed by market forces and the rule of law. There is a consensus among China trade experts that the way that China organizes its economy is at odds with these unwritten central theses. In all too many sectors of the Chinese economy, neither market forces nor the rule of law are determining competitive outcomes. While some problems are generally recognized – such as its undervaluation of China's currency, its stated autarkic industrial policy goals (such as evidenced by its policies of promoting “indigenous innovation”) and its inadequate protection of intellectual property, what is less well understood, are the hidden interactions between private parties and state-owned enterprises, between the latter and government financial institutions, or the pressures on investors for transfer of production and technology.

The WTO's rules have not been able to deal with subtle forms of administrative guidance of Chinese enterprises meeting government and Communist party expectations whether conveyed through direct instruction or not. The WTO regulates government measures, and when those measures are hard to detect, enforcement efforts have to focus on the fact that commercial results that would not occur in an open market are not occurring in China in a variety of sectors. In most instances, the WTO rules are not generally designed to deal with shortfalls in results as opposed to specific violations of clear rules.¹

A related problem is the tendency of China to bring spite cases in other sectors in retaliation for valid cases brought against its WTO-inconsistent measures. This is immature behavior that must not be allowed to be effective in deterring legitimate cases from being brought. In much more dire circumstances, President Kennedy once told the American people:

¹ One exception is the provision in WTO dispute settlement dealing with “nullification and impairment”. *If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of (a) the failure of another contracting party to carry out its obligations under this Agreement, or b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or (c) the existence of any other situation ... [it may bring a case.]* In fact there are obstacles to prevailing in these cases including an examination of what the parties reasonably expected when the obligations were first negotiated.

"aggressive conduct, if allowed to go unchecked and unchallenged ultimately leads to war."² We are not talking about anything remotely as serious as that, but about the possibility of a deteriorating trade relationship that will serve neither country's best interests. Henry Kissinger notes in his recent book on China that it is traditional Chinese diplomatic practice to seek to teach a lesson to those countries that it feels have wronged it by reacting with what it sees as a proportionally aggressive response. When a legitimate action is taken against Chinese exports to the United States, China's imposition of a tit-for-tat trade restriction must be made unacceptable.

4. The fourth deficiency: the existing international rules are less than perfect.

The following are just a few prominent examples:

a. *State capitalism and the rule of law.* While China undertook in its Protocol of Accession to the WTO a number of obligations with respect to state-owned enterprises (SOEs) and commitments in this form have been held to be enforceable, no other country had done undertaken far-reaching obligations of this kind. Thus, when SOEs are used as instruments of discrimination, a case must be made out that this is the act of the government and that it constitutes denial of national treatment. Competition in commercial areas from state enterprises is just beginning to become the subject of international investigation and discussion in the OECD and of negotiation in the TransPacific Partnership (TPP). There are no current rules specifically addressing the support by states of their government enterprises nor governing the conduct of these enterprises in the commercial activities in competition with private companies. The incidence of state enterprises is unfortunately expanding rather than contracting. This is true of Post Offices suffering from declining revenues from first class mail and express package delivery and looking to expand to find other sources of revenue. It has been a bone of contention for years between Japan and the United States as Japan Post continues to sell financial products with less regulation and more market access than accorded to private insurers and banks.

b. *The protection of intellectual property.* The WTO Agreement on Trade Related Intellectual Property (TRIPS) provides that systems of laws be put into place to allow private parties to enforce their IP rights. Progress is being made in China through cases being won in local courts (for example the use by Starbucks of its logo), but on the whole the theft of intellectual property in China and many other countries is rampant. The WTO rules guarantee process not results. No country is held liable for the fact that billions of dollars of software and media are simply ripped off. Efforts to stop counterfeiting are made, but need are unequal to the task. There has been no penalty for any government failing to succeed in stamping out the pandemic of intellectual property theft.

c. *The Agreement on Technical Barriers to Trade (TBT).* The WTO rules on standards have proved to have few if any teeth. National standards are adopted that in fact serve as barriers to trade. This becomes critically important when the subject is encryption which can impair all

² President Kennedy's Radio Address on the Cuban Missile Crisis, October 22nd, 1962

of e-commerce. The Standards Agreement does require that: "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade." This is all too subjective a rule. In addition, the agreement states the adoption of international standards is generally to be preferred to the adoption of separate national standards. None of this has prevented the use of separate national standards from attempts at walling off domestic markets.

d. *The Agreement on Subsidies and Countervailing Measures (SCM)*. While export subsidies are prohibited as are explicitly import substitution subsidies, other subsidies must be shown to cause serious prejudice to be actionable. This is far from an easy process and requires WTO panel approval to be actionable – that is to obtain their removal (as opposed so offsetting the subsidies in a domestic market through the imposition of countervailing measures). It is not surprising that this form of discipline has proved to be largely ineffective.

5. The fifth deficiency: conflicting policy goals and jurisdictions. Congress has shown a continuing interest in the undervaluation of the RMB. Estimates in recent years have varied from 20 to 40% undervaluation, with it diminishing over time as the rate of China's inflation eats away at China's competitive advantage. Two years ago, Fred Bergsten testified before this Committee as follows:

The Chinese renminbi is undervalued by about 25 percent on a trade-weighted average basis and by about 40 percent against the dollar.¹ The Chinese authorities buy about \$1 billion daily in the exchange markets to keep their currency from rising and thus to maintain an artificially strong competitive position. Several neighboring Asian countries of considerable economic significance—Hong Kong, Malaysia, Singapore and Taiwan—maintain currency undervaluations of roughly the same magnitude in order to avoid losing competitive position to China.

This competitive undervaluation of the renminbi is a blatant form of protectionism. It subsidizes all Chinese exports by the amount of the misalignment, about 25–40 percent. It equates to a tariff of like magnitude on all Chinese imports, sharply discouraging purchases from other countries. It would thus be incorrect to characterize as "protectionist" a policy response to the Chinese actions by the United States or other countries: such actions should more properly be viewed as anti-protectionist

A year ago Fred Bergsten pointed to progress being made:

They have been letting [the real exchange rate] go up an average of 10 to 12% on an annual basis so it's fair to say that if they would let that continue for another couple of years they would achieve a restoration of underlying equilibrium in the exchange rate. That would take away most, if not all, of the distortions that their persistent interventions have created.

The WTO has a rule contained in GATT Article XV that “Contracting parties shall not, by exchange action, frustrate the intent of the provisions of this Agreement”. Whatever the undervaluation of the RMB, it swamps current U.S. and Chinese average tariff levels. Why doesn’t market intervention which lowers the exchange rate of a currency reach a level where it passes the Article XV test of “frustrating the intent of the [WTO/GATT] Agreement”? If not now, two years ago? Governments have to be willing to invoke the WTO rules otherwise they are simply a dead letter. Would the US Treasury during any of this period have told USTR to file a WTO/GATT Article XV case against China? Not likely.

6. The sixth deficiency: WTO dispute settlement has difficulty with factually complex cases. The WTO has no real means to investigate the facts in any case. Panels sift through increasingly voluminous submissions of parties. Dispute settlement panels, as opposed to national governments, do not assume that anomalous failures to achieve success in one market while achieving far greater successes in other -markets are due to restrictive government measures, nor are they disposed to finding a violation when state-owned and state-influenced enterprises achieving the same market closure that the government could have achieved by fiat. That is said to be in the realm of competition policy. But what is international trade about other than competition. Trade rules are a form of competition policy. One step in the right direction would be an amendment to the WTO Dispute Settlement Understanding that shifts the burden of proof to the Member alleged to have closed its market through its state-owned and state-supported enterprises if a pattern of behavior exists suggesting intentional market closure.

7. The seventh deficiency: WTO dispute settlement must be judged not by press releases announcing victory (often there are two conflicting press releases, once from each party, both claiming success). Successful litigation can only be judged by commercial success. Is IP protection really delivered in a broad and meaningful way when an IP case is won? Is a market that was closed (such as China’s market for wind energy equipment) now open? Were the programs complained of dismantled and were they the ones that really mattered? Or did the “successful” case prove to be entirely marginal in effect? This is not a comment limited to the effectiveness of the WTO rules. Succeeding in litigation requires having the facts, the facts lending themselves to a finding of one or more violations, bringing the right case to begin with (covering enough of a large number of reinforcing protectionist measures that are preventing market access), the case being well-presented, the WTO dispute settlement panel and its supporting secretariat staff doing an unbiased and solid job, winning on appeal, and obtaining the necessary implementation to obtain the desired result – all in a timely enough manner to matter -- and not least, seeing positive results in the marketplace.

Some Potential Cures for Consideration.

It is easier to cite what is wrong with trade law enforcement than to provide a sure-fire set of remedies. But there are elements that emerge from the above discussion that are useful to consider (some of which are underway):

- Vastly improve the government's intelligence gathering and analytical capabilities. This requires a long term and substantial investment of resources.
- Work more actively with the private sector in this process.
- Unify the Executive Branch's policies and priorities (eliminating the silos that exist among and within agencies), and consult closely with Congress to obtain support for the policy course chosen, including through permanent trade agreement implementing procedures and regular formal policy guidance.
- Build a stronger international community of interest in dealing with trade and investment distortions (a number of countries are doing very well in exporting raw materials to China, for example, but this distorts the long term development of their economies – it has effects not dissimilar to those of 19th century colonization).
- Work more closely with countries with allied interests to share information and analysis, engage in diplomatic initiatives and litigation as appropriate.
- Provide greater transparency. Illuminate practices that distort trade and investment or give particular companies, especially state-owned and state-supported companies a competitive advantage. Transparency is an antidote to arbitrary decision-making. There may be no substitute for it. Make regulatory coherence an important objective of U.S. policy.
- Identify additional sources of leverage in the U.S. regulatory structure.
- Where the stakes are high, litigation risks need to be re-calibrated. The transparency and exchange rate provisions of the WTO/GATT (Articles X and XV) cannot be allowed to be considered as dead letters. Amend the WTO Dispute Settlement Understanding to shift the burden of proof to the Member alleged to have closed its market through its state-owned and state-supported enterprises if a pattern of behavior exists suggesting intentional market closure.
- Adopt a policy that measures progress by results in the market place rather than simply additional assurances in settlement of a trade complaint.
- Do not conclude that the United States simply lacks leverage in dealing with unfair trade and investment practices with respect to any country which runs a substantial and persistent trade surplus with the United States.
- An independent U.S. government judgment is needed of the national interest and therefore the priority to be given to matters for negotiation and litigation, fitting in with an overall strategy. Not every private complainant need have the largest trade at stake to gain U.S. government attention, but the country should have a strong interest in the outcome when including such matters in its priorities.
- Make retaliatory foreign restrictions more costly to the foreign government imposing them when the foreign measures are responses to legitimate U.S. trade actions.

- Return the term "reciprocity" to the American trade lexicon – not in any narrow self-defeating sense, but in requiring liberalization in fact in return for our maintaining an open market.
- Negotiate new rules where there are gaps in existing disciplines or new problem areas are identified. Begin the process of closing loopholes. One of the hardest to deal with will be what governments feel justified in doing in the name of their "essential security". This WTO clause must not become a cover for protectionism.

Trade agreement negotiating priorities

I am putting the following thoughts forward for your consideration both on behalf of the National Foreign Trade Council and myself:

Setting priorities. Our trade negotiation priorities have to be set as intelligently as possible, not by simply what lands in the in-box. We have entered into some of our FTAs too often by chance rather than planning. What should we be aiming at now?

- It is critical to pursue a multilateral agenda at the WTO. There is significant benefit to modernizing rules and pursuing new market access at the WTO even if it is impossible to move forward with a comprehensive and unanimous undertaking such as the Doha Round. The National Foreign Trade Council recently released a report on "A 21st Century Multilateral Trade Agenda," which I commend to you. I would like to attach the report for the record.
- What we cannot achieve at the WTO we should accomplish regionally. We are blessed by the appearance of TPP – the Transpacific Partnership. We did not invent it, but it can serve as a model for the architecture of the world's trade rules going forward.
- We know that American companies are very good at providing business services. We need a services trade agreement. Estimates are that the number of additional US jobs by opening up global services markets could be as high as 3 million jobsⁱⁱ. And the benefits would not only be here but global, as foreign economies grow and became more efficient. USTR Amb. Michael Punke is working hard to see whether the WTO can be a forum in which a services agreement can be achieved, not ten years from now, but within the near future. TPP is most likely to be where the first progress on services will be made – on a negative list basis – meaning simply if a country does not negotiate to exempt a service from liberalization it will be open to international competition.

- We know that American companies are the best in the world at providing data services. The internet and cross-border data flows have grown exponentially since the WTO rules were put into place. Countries are acting to inhibit this essential new element of global commerce. This unwarranted interference must be stopped, for their sake and for ours. Our trade agreements have to be brought into the information age. Information, communications and technology goods and services should be both duty and tax free -- and not subject to domestic taxes on the basis of use. When an African government or our own taxes communications, it and we tax economic growth.
 - We know that state-owned companies are a growing distortion of world trade in many sectors, rendering in many respects nearly meaningless many of those fine rules negotiated into the WTO. For the first time the United States is pressing within the Transpacific Partnership (TPP) to create rules that will curb the distortions caused by competing with state-backed companies -- companies supported with below-market rate finance, that have preferential access to government networks, and that are regulated less stringently than private competitors. This is the story of market limits in existence in many sectors in China, and it is the story of Japan Post banking, express delivery and insurance. We even have proposals floated at home to get our own Post Office more deeply into competing with the private sector with unfair advantages, and Americans are proposing this SOE expansion abroad in the Universal Postal Union while opposing it in international negotiations in TPP. Why do we want to head further in the direction of Japan and China while preaching to them the benefits of private market? Indeed, although Japan's industrial policy regime no longer functions as it once did thanks to more than 30 years of trade negotiations and reforms emanating out of lessons learned from bursting of its asset bubble, Japan's legacy remains as a model for state developmental capitalism. In this context, ensuring a level playing field for U.S. companies with respect to competition with the postal bank, insurance, and delivery in Japan, where rule of law and democracy are firmly established, is critical for U.S. trade policy as a precedent for China Post, India Post, and others.
- U.S. strategy has to be to ensure that the market model, not the state-dominated model prevails. This has to be a top American trade priority. At least in TPP, we are seeking disciplines over state-owned enterprises. Someday the TPP rules on state-owned enterprises will apply to China. TPP is not designed to exclude China, but ultimately to include it. Our market-based system is superior to theirs -- a mixture of market and state-developmental capitalism.

- We know that alternative sources of energy are essential to our future and to the futures of our trading partners. Environmental goods and services must be made duty and barrier free. This is not about whether one believes in climate change or not. It is about whether one can take a deep breathe in Beijing or Caracas and not shorten one's life. America and her trading partners will improve their lot in so many ways if this agreement is attained, one hopes in the WTO, but certainly in TPP.
- We know that as tariffs come down, border procedures in many countries strangle trade. Trade facilitation would enhance our economic growth and that of every signatory. We can try to achieve agreement in Geneva, and we will do it in TPP.
- We know that with tariffs in many countries being lowered, internal regulations often stifle trade. TPP will begin to address this problem under the heading of regulatory coherence. It is a small start, but it is a start.
- We need to enter into serious formal trade liberalizing arrangements with Japan and Europe. We are cut off at present in the WTO from doing so, but TPP is an open and good opportunity to make Japan a full partner in deep and meaningful liberalization, in a way that was not possible in any bilateral agreement. Europe has reached a stage of internal integration where it should be a ready partner for us, to look outward across the Atlantic and open trade possibilities more deeply than is possible with any other trading agreement among equals.
- We should not forget about the FTAs that we do not have or that need improvement. Why should European goods get preferential access to Canadian provincial procurement? We entered the GATT 65 years ago to end Imperial Preferences. Why should we sleep through their being reinstituted, with the sole difference that 27 European nations will be the beneficiaries? And is there more to be done with Brazil and India? Worth examining closely.
- We need to care more about all aspects of the fairness of trade. The WTO/GATT limits subsidies, prohibiting some, regulating others. It prohibits trade in goods of prison labor. Our consumers are given a choice to purchase fair traded coffee – made from coffee beans that provide a fair return to growers. Progress has been made on anti-corruption. An intensive effort is needed to consider what improvements are needed in defining what is fair and not fair in trade.
- We need to assure that our trade agreements allow for the movement of highly skilled persons across borders, and in our case, are allowed to stay. We have the best education system in the world but won't allow the PhDs and Masters graduates to

stay here. Why can't we recall that about one-third of Silicon Valley companies were founded by persons born elsewhere? At Intel, one of the three founders was born in Hungary. Our space program was the brain child of a German scientist, and our nuclear energy the product of an immigrant from Italy.

I will conclude this section with a few procedural notes:

- Congress has to be a full and equal partner in setting national trade priorities, and that has not been the case for years now. The absence of trade legislation (most recently called "Trade Promotion Authority") has not been to the advantage of Congress but allowed administrations to wander about the trade landscape without your guidance.
 - You should decide how you want to work with the executive, in what was called variously fast track and Trade Promotion Authority, and make it permanent. The Treaty Power is permanent and has been workable. No overly complex device needs to be created, just a means for the two branches to work together in an area of vital national interest in which neither can act alone.
 - You need to adopt a substantive trade negotiating mandate with objectives and priorities to give guidance to the every President, and update it at least for each new Administration.
 - Doing so could be enhanced by your being advised by either a standing commission, like the Williams Commission that preceded the GATT's Tokyo Round, or *ad hoc* committees to examine new and possibly contentious complex issues, particularly where there are divided domestic interests, to hold in-depth hearings and finance studies, to assist you and to inform the Executive. There is not a trade negotiation policy planning process within the U.S. government at present equal to the task of sifting through these issues and providing adequate advice.
- A word is in order about the role of the private sector. The great strength of the U.S. negotiating position has been the private sector advisory process. As it was devised, there was none that was its equal in the world. Our negotiators, including me as a complete skeptic, knew more than any other country's negotiating team about what we needed that was of value and what we could trade for what we needed. This structure needs to be revitalized, strengthened. Those best able to translate business objectives into practical public policy should be thoroughly engaged, rather than barred from service. Of course they represent private sector interests, that is what they are there to do -- whether they are paid by the year, by stock options, or by the hour. But there needs to be full and complete financial disclosure -- the negotiators

need to know exactly what personal or company benefit would accrue to following the advice of those giving it. This may seem like a minor item. It is not. Our government does not run many businesses, thankfully. There is no reason why government should know without having private sector interests very close at hand whether what they get or give in any negotiation will create jobs in this economy. It is a perversion of government to cut itself off from whomever the private sector believes best articulates their interests.

Conclusion.

Tomorrow morning I leave for Melbourne to represent the NFTC, one heck of a long way to go to be part of the cheering section. But I want to find out more about what is taking place and assist if I can in any way. TPP is the world's only live and exciting trade negotiation in which the United States is involved. One thing that I wish to convey is that those TPP participants that employ state-owned enterprises have an interest in disciplines being put into place on how these government enterprises compete in commercial markets. Participating countries in TPP should negotiate with full awareness that it is more than a vague possibility that some other country will have a larger SOE that will distort competition in a manner harmful to their interests. TPP is exciting and important because it has the real potential to set the future rules for trade in a way that I regret the WTO has not been able to continue at this time. I hope that TPP will become a good template for the new rules that ultimately govern global trade through the WTO.

I will close with the "additional remarks" that I appended to a Council on Foreign Relations Task Force Report released last September on *U.S. Trade and Investment Policy*:

There is no acceptable substitute for the United States exercising leadership in shaping the international economic environment to foster its interests. There is no pause on the part of other countries pursuing what they see as their own trade interests. Bilateral and regional arrangements excluding the United States are proliferating. Inaction by the United States in proposing international trade initiatives has adverse consequences. It can only lead to U.S. goods and services receiving less favorable treatment than that accorded to competitors from other countries.

Realistically, the United States is not going to close its market; the primary challenge for U.S. trade policy is maintaining and further opening of foreign markets. Success in gaining benefits from trade agreements, past and present, depends most heavily on domestic policies—creating the conditions for America remaining a primary location for innovation—which includes not only invention but production. [U.S. trade policy must] clearly build on a foundation of domestic policies that foster American economic strength, including the creation of good jobs in sufficient quantity.

The thrust of American policies after the Second World War has been to define its own interests broadly as fostering global economic growth. Trade agreements today must address additional common interests—access to food to enhance food security, access to

*critical raw materials to avoid dislocations of supply, assuring food and product safety in a manner that does not constitute protectionism, adding disciplines for state-owned and state-supported enterprises that compete with private companies, creating free trade in environmental goods and services, and similarly improving access to information and information and communications technology goods and services, among a substantial list of priorities.*ⁱⁱ

ⁱ Ernest Preeg, *US and Chinese Manufacturing Trade Imbalances Surge in 2011*, The Manufacturers Alliance for Productivity and Innovation (MAPI) February 2012.

ⁱⁱ Bradford Jensen, presentation at the Peterson Institute, *Global Trade in Services: Fear, Facts, and Offshoring*, 2012.

ⁱⁱⁱ <http://www.cfr.org/trade/us-trade-investment-policy/p25737>

Mr. BRADY. Mr. Wolff, thank you. Thank you for all the testimony. I want to begin by reiterating the point Chairman Camp and I made at the initial portion of this hearing which is what we truly want to invite all interested stakeholders, job creators, in addition to the witnesses here today in giving recommendations to this Committee for the record on where we go next.

I cannot emphasize how interested we are in hearing your views on what is next for trade policy for America.

I want to thank the witnesses for raising the issue of non-tariff barriers, what we are finding in the 21st Century global marketplace is it is not enough simply to bring down the tariffs and the

quotas. We often find there are locked doors beyond that making it difficult for us to sell and compete.

We also discovered some of those non-tariff barriers are in essence like trying to put an American plug into an European socket. Different standards, different regulations in telecommunications, technology, financial services, security, and food safety. All those block our ability to sell our goods and services around the world.

Thank you for the emphasis on that. It needs to be part of our 21st Century approach.

I want to ask a specific question of each of our panelists about trade facilitation, and what we have learned since the global trade flows decreased significantly in 2008 and 2009 was moving goods cheaper, faster, and better around this world is critical to trade, competition and lower prices.

Yet, there are a number of barriers to that. I know in the developing countries, we are seeing great interest in the WTO and trade facilitation. We see developing countries like Africa who have an interest in trade facilitation as a means of reducing the costs of doing business among themselves as well as their trade partners.

My question is how would a new trade facilitation agreement affect your ability to sell throughout the world and to create jobs here in the United States, and what barriers do you see as the most significant that will be part of that discussion?

Mr. Wolff, why don't we start with you.

Mr. WOLFF. Many of the Members of the National Foreign Trade Council are amongst the largest trading companies in the world, global companies. Moving goods across borders is still all too difficult.

Tariffs have come down a lot in most places, not every place, obviously. Customs' procedures are still a real problem, and if we are going to salvage anything out of the Doha Round, one of the major things to salvage is the agreement on trade facilitation. It actually would promote development. The Doha development agenda could be made real with an agreement on trade facilitation.

I know Ambassador Kirk is pushing this issue very strongly as well in TPP. It means a lot to American business.

Mr. BRADY. Thank you, Mr. Wolff. Mr. Quigley.

Mr. QUIGLEY. I think anything we can do to reduce the amount of friction in the pipe is obviously going to increase its throughput.

We are strong supporters of the idea of standards, mutual recognition of those standards, and then fair enforcement in order to promote fair competition.

Trade facilitation absolutely can increase our exports and the amount of global trade that we have. That becomes the engine of jobs and growth.

Mr. BRADY. Thank you, Mr. Quigley. Mr. Krzanich, you made the point you are manufacturing here but selling and exporting around the world. Trade facilitation is key?

Mr. KRZANICH. Yes, sir, Mr. Brady. As I mentioned, most of our product is manufactured in the U.S., 75 percent, but 75 percent of our revenues from outside trade agreements give us access to 95 percent of the consumers that lie outside the U.S.

Trade agreements are critical to our access to markets at a fair and even cost.

Mr. BRADY. Thank you. Mr. Harris, you are a distributor. Obviously, you have to get the product to the customer. Trade facilitation an important part of what should be America's new trade agenda?

Mr. HARRIS. Very important. I think two of the areas where we see we could benefit is relative to the tariffs, if the tariffs were removed. The second area is relative to Customs. Somebody mentioned that.

A company like Harris & Ford, we filled out paperwork or we actually had our expeditors fill out paperwork, and they had a "1" instead of a "3." We found it, corrected it. We were fined \$78,000 on one transaction. On that particular product, there was zero duty on that product.

Mr. BRADY. Apparently we found a new way to balance the budget here in Washington.

Mr. HARRIS. I think so.

[Laughter.]

Mr. BRADY. Grant Adonis, former trade leader at USTR, made the point that time is a trade barrier, and we need to focus on real 21st Century means to decrease that time, that cost, and we will create jobs in America as a result.

Thank you very much. I would like to yield to Ranking Member Levin.

Mr. LEVIN. Thank you. Welcome.

Mr. Wolff, you talked about the need for more resources, especially in language. I hope this new proposal of the administration will lead to that. They are asking for more resources. We will see if they are given that.

Mr. Harris, your story is a story that should be heard by small businesses and medium sized businesses throughout the country because, while they are important in terms of trade, too few still participate. That has been a problem for a long time.

Let me just zero in on a couple of other issues. I just have a couple of minutes.

Mr. Quigley, let me just talk to you about services. Within WTO, services' negotiations really never got off the ground. I think that is a fair characterization. It kind of went up in smoke.

What do you think? How do we do it better but differently?

Mr. QUIGLEY. There is no question there is a huge opportunity that simply has not been looked at, when we look at the scale of services in our economy and the opportunity that is there in a global marketplace.

Moving that up the agenda and then trying to advance something as we have advocated in a transatlantic way as a starting place, and then invite other countries to join an agreement that we might be able to reach between Europe and the U.S., I think, would be an important first step.

Mr. LEVIN. You think there is reality to that in terms of discussions with the Europeans?

Mr. QUIGLEY. I do indeed. I think we have a mutual opportunity that we should not squander, if the U.S. and Europe as this huge market that we represent when we work on a combined basis, if we want to influence the future direction of trade negotiations, we need to come together.

I believe that the high level working group that has been formed and this notion of a vision for the 21st century gives me hope that in fact we can engage on these issues and advance the ball.

Mr. LEVIN. Mr. Krzanich, you were somewhat optimistic in terms of relations with China. On page ten, you talk about a number of the JCCT commitments that have been implemented, but then there are others that have not, so the administration may want to carefully track the completion of the Chinese commitments made to date.

I am not sure, I am thinking back when there was competition between our high tech industries in Japan, and the difficulties that we had to barriers.

Do you face similar problems in China? I am not clear from your testimony. How free are you to work there, to trade there, to feel protected there? You are such a vital industry.

I may be putting you on the spot. If there is a conflict there in terms of your proprietary interests, do not answer beyond what you should, but just in the minute or two I have left, describe what it is like.

Mr. KRZANICH. I would say that one of the major concerns that we have is that China has listed semiconductors as one of their strategic industries. You see them putting together programs and policies that really favor and try to establish this industry.

That puts pressure on us around intellectual property protection, and then also it started to creep into other areas, of our ability to do trade in that area as well.

Them picking out semiconductors as a growth and a strategic industry has become one of the issues for us.

You asked how free are we to do business there. We have been able to do business very well there from the standpoint of being able to get our product in and out of there and being able to manufacture, and we do have manufacturing in China, but we continue to see pressure on their part to get access to that intellectual property that resides there, and we are finding that we are having to be more and more careful about how we manage that.

Mr. LEVIN. Do you expect the U.S. Government to be helpful to you? Even companies as large as yours probably cannot do it alone. You need a vigorous USTR and governmental presence to help you.

Mr. KRZANICH. Yes, it is critical that Government helps us remain having access to those 95 percent of consumers outside the U.S., and helping us break down these non-tariff barriers, the ones where governments employ standards that favor local contents.

Mr. LEVIN. Thank you.

Mr. BRADY. Thank you. Mr. Herger is recognized.

Mr. HERGER. Thank you, Chairman Brady. I would like to ask a question of each of our panelists. With the Doha round at an impasse, what WTO initiatives would be the most beneficial to you? Beginning with you, Mr. Harris.

Mr. HARRIS. I think I will have to pass on that. I cannot answer that.

Mr. KRZANICH. I do not know if I know exactly which of the WTO initiatives would be best. You are asking for specific initiatives.

I think anything that continues to lower the trade barriers and these non-trade tariffs that are being applied by governments is good, but I do not have specifics beyond that, sir.

Mr. HERGER. Thank you. Mr. Quigley.

Mr. QUIGLEY. Our recommendation given the fact that we are a decade in and we seem stalled is that we move on. The way we recommend moving on is let's look at U.S. and Europe and what can we do together in terms of that huge platform that we represent, and if we can build some principle based standard approaches to some of the matters that have become so difficult on the Doha round, and then other countries decide they want to join, to participate in this U.S./Europe market, now we have the U.S. and Europe driving standards, driving for mutual recognition, driving forward and facilitating trade.

That is our recommendation, that we move on, and we move on with our partners in Europe, and let's make something happen in a bilateral way that will then lead to plural lateral kinds of agreements.

Mr. HERGER. Thank you. Mr. Wolff.

Mr. WOLFF. Three possibilities exist currently, I think. A services agreement among a coalition of the willing. There are meetings going on in Geneva now among those countries, about 20 countries, that believe they can get something done in Geneva on services, to see whether it be done with full participation of all the WTO Members, it could become a WTO agreement.

Under GATS, the General Agreement on Trade in Services, there is the possibility of having less than most favored nation treatment, so one can have an agreement in the WTO that does not apply to everybody, just those who are willing to play.

Second, an expanded ITA, the Information Technology Agreement, there is sentiment to go forward with that.

Third, an agreement on Environmental Goods and Services would benefit all countries. Going to zero tariffs. In addition, an agreement on trade facilitation, as mentioned earlier. What is not possible in Geneva, we will do in TPP, and TPP will become the template for what happens in WTO later.

Mr. HERGER. Thank you.

Mr. BRADY. Thank you, Mr. Herger. Mr. Davis is recognized.

Mr. DAVIS. Thank you, Mr. Chairman.

I would like to touch on a question that I opened up with to Ambassador Kirk. I would like to talk about the impact of Federal regulations on your ability to export, more specifically in the area of manufactured goods.

MAG, a very successful machine tool producer that is located in my district, and a systems company, has a tremendous amount of their success tied to international business.

In fact, a very large portion of their business portfolio is export of products internationally. It creates a tremendous amount of jobs in the automotive, aerospace, and industrial equipment industries.

According to MAG, obsolete Cold war export regulations significantly limit their export market. For example, the dual use technology question that is largely outdated right now, particularly in the area of machine tool manufacturing.

For example, five axis metal cutting machine tools continue to be tightly controlled by the Federal Government. However, this technology is now available as a commodity worldwide, putting U.S. suppliers at a severe disadvantage.

There are now at least 13 Chinese machine tool builders building five axis machines that as a matter of policy, the Aviation Industry Corp. in China will only commit to a maximum of ten percent of its import purchases to the U.S. machine tool industry due to the U.S. export policy for five axis machine tools.

This puts European competitors at an immediate advantageous position to capture the rest of the market share in the fastest growing market in the world.

MAG informs me that they could increase their annual machine take output in Northern Kentucky and the commensurate job creation associated with this by 30 percent, creating many new jobs, focused on export, because of this approval process if it were to be modernized.

From your view, how do U.S. regulations impact your ability to compete in international markets, and what should we as Congress be doing to ease any regulatory burdens that companies experience?

I would just open it up to the panel in general.

Mr. WOLFF. The National Foreign Trade Council spends a good deal of its time on export control matters and sanctions. The controls and sanctions really have to be multilateral, not unilateral to be effective. If something is available generally from other sources, it must not be restricted from the United States.

We are concerned about national security, but we also have to be concerned about our industrial base. Our industrial base is impaired if goods are generally available from other places and we are the only country restricting the exports.

Mr. DAVIS. Would anybody else care to comment?

Mr. KRZANICH. I will comment. I think you made one very key point in that many of those regulations and rules were defined a long time ago when those technologies were unique or at a different level of acceptance or availability.

We see some similar trends in our industry as well, as competing power becomes higher. Things that were considered super computers before are available on your desktop and eventually in your palm of your hand.

We also see things like radiation hardness, where we start to shrink geometries and just make things smaller. Things become just naturally more radiation hardened.

Some of those regulations need to be updated for what the current trends in technology are.

Mr. HARRIS. I am just going to make the comment that again at Harris & Ford, we are the small business represented here. Thirty percent of the products we purchase are from overseas, the majority of that by far is from China. As far as the exports, there is a disproportionate amount of exports versus imports.

Anything that you can do that lowers the barriers for our customer base enables Harris & Ford to be able to participate, and particularly, I am thinking in China, because that is where our imbalance is.

Mr. QUIGLEY. I would just comment very quickly, Deloitte is not a manufacturer, but from my Transatlantic Business Dialog approach, what we have often times aspired to this barrier free market between the U.S. and Europe, and when it comes to these issues, we always advocate the notion of can we establish global standards and with global standards, have mutual recognition of those standards, and with that mutual recognition of those global standards, then create a barrier free market, where growth can in fact occur.

Mr. DAVIS. Thank you very much. Mr. Chairman, I yield back.

Mr. BRADY. Thank you, sir. Mr. McDermott is recognized.

Mr. MCDERMOTT. Thank you, Mr. Chairman. Mr. Krzanich, we pass laws here and the Government tries to do things to help, but I would like to have your assessment of at least one thing that has been tried.

I understand you have a serious problem with counterfeit chips being imported into the United States. The National Defense Authorization Act of 2011, the NDAA, included a provision to ensure that Customs can work with rights' holders such as Intel, to more effectively identify and combat IPR infringing products.

In the State of the Union, the President made clear that beefing up IPR enforcement at the Border will be a top priority.

Would you agree with that, that the implementation of the NDAA provision is one way they can do that, and are you working with the administration to make sure that happens?

Mr. KRZANICH. The simple answer is yes. Enforcement of those counterfeiting rules and having the Custom agents being able to enforce them at a stronger level is good. Yes, we are working with the administration.

Counterfeiting is much broader than products just working their way back into the U.S. Remember, I said 95 percent of the consumers are outside of the U.S., 75 percent of our revenue is from outside the U.S.

It is really much more global than that, and what we really need to do is really focus on externally as well.

It is counterfeiting going on in China and those products are probably never coming back into the U.S., but they are being sold throughout the world, and really having all of the countries enforce these counterfeiting rules and regulations.

Mr. MCDERMOTT. If they present to you some chips and say these are coming from somewhere, do you have some way to make sure those chips are not your chips? How do you work with Customs in dealing with that?

Mr. KRZANICH. Yes, sir. We have a system. Think of it as like a bar code that every part has, that is unique to that part. It is generated during the manufacturing process, and tells us exactly the identity, where it was manufactured, what date, all that kind of information.

When Customs hands us a part it questions whether it is counterfeit or not, we can tell almost immediately now whether it is counterfeit or not.

Mr. MCDERMOTT. It is not reproducible by somebody else and putting it into another part?

Mr. KRZANICH. No. We would know, it is unique to that part and it has a unique generation code. It is not a simple number like you could understand otherwise.

Mr. MCDERMOTT. You are saying the biggest problem is not parts coming in here, but really what is going on—

Mr. KRZANICH. I am saying it is a global issue broader than just the U.S.; yes.

Mr. MCDERMOTT. How can we be helpful in the global issue?

Mr. KRZANICH. I think it is back to the discussion that we have had all morning here in this session and the session prior as well, around really having the government help us with protection of intellectual property rights in all of these countries.

All of this is around—whether it is counterfeit parts or counterfeit software or counterfeit products in general, it is around support of intellectual property rights.

Mr. MCDERMOTT. Can it be done in a country that does not want to put the hammer down on those people who are making counterfeit things? We are talking about China here. Obviously, there are lots of other places.

Mr. KRZANICH. I think it has to be tied to broader initiatives. You are right, probably just this initiative on its own would not be enough to get them to move.

When you tie it to other trade efforts and make it broader than just this one, access to our markets, teaming with other countries that have intellectual property to protect as well, and access to those markets, I think you can incentivize them that to play in this global economy, you have to play by a certain set of rules, and that includes protection of intellectual property.

Mr. MCDERMOTT. Do you think as the Chinese move up the scale of manufacture from fabric and bicycles and now they are getting into electronics, that they will have more interest in this kind of enforcement?

Mr. KRZANICH. Just my own observations from my time in China, I would say yes, you see less counterfeit as you travel the streets of China.

I think also any country that as you start to develop your own intellectual property, you start to become more and more interested in intellectual property protection.

I think there is a natural evolution that will occur as well; yes.

Mr. MCDERMOTT. Thank you very much for your testimony.

Mr. BRADY. Thank you. Chairman Camp is recognized.

Chairman CAMP. Thank you. Mr. Wolff, you mentioned permanent Trade Promotion Authority and that this Committee should establish some guidance, and there should be objectives.

What kind of things did you have in mind?

Mr. WOLFF. I sat through 2 years here when the first Trade Promotion Authority was put through. The House actually passed you, Mr. President, can change any law subject to just an override, and the Senate said we are not doing that, we are going to have fast track.

I think executive agreements need domestic implementation for trade, similar to treaties. Our treaty power, the way we handle treaties is in the Constitution and is permanent. There is a mechanism for doing it.

That does not mean there should not be checks and balances within the committee structure to make sure that any agreement that comes through gets scrutinized and approved.

I think the objectives have to be upgraded and changed regularly, and if the objectives are not met, they would not qualify for this permanent fast track in effect.

Namely, you have heard here today new issues, the cross Border data flows, information technology products that are no longer adequately covered by agreements.

We have now very outdated—not all of them but many of them—objectives in existing law. We are pretending, at least the administration is pretending that the procedures exist.

I would say put the procedures into place, put them in permanently, and update the objectives at least for every new Administration, no less than frequently than that.

Chairman CAMP. Thank you. To our other witnesses, obviously bilateral trade with India and Brazil has grown rapidly in the last few years. They are important markets for our exports and also for services.

There are practices that have been occurring in both of those countries, and certainly in China, as we had been talking about earlier today, but the Indian and Brazilian markets as well but in a different context.

What do you think about these protectionist policies? What effect do they have in our ability to enter into and sustain business in those markets, and what should we do about it? Should we pursue bilateral investment agreements or should we negotiate around them with others who are interested or both?

Mr. Harris, why don't I start with you, and we can just go down the line.

Mr. HARRIS. Again, in speaking with our staff that handles that part of Harris & Ford, as I mentioned earlier, it is more difficult for us to work with Brazil than Mexico or Canada.

If we could extend something similar to an agreement where you, the House here, the Ways and Means Committee sets the rules, that will make it easier for Harris & Ford to do business with Brazil.

The paperwork with Brazil is a nightmare for a small company compared to Mexico or Canada.

Chairman CAMP. All right. Mr. Krzanich.

Mr. KRZANICH. I think you stated the problem very well. I would like to say countries like Brazil are some of our fastest growing markets now for our industry as well.

I think the time is now to try to institute these kinds of programs. Their markets are not as developed and as big as say China, for example. They do not have the large internal market that they can capitalize on as well.

I would say the answers are similar to what we said throughout this conversation, that we really need to put together trade agreements that break down these non-trade barriers, these government driven programs.

I think now is the time to do that because they are going to be incentivized because access to our market is a bigger incentive for

them, so they will be more willing to negotiate now than late, so the time is critical.

Mr. QUIGLEY. Nothing to really add other than to just simply restate that because of the scale of those markets, the pace at which they are growing, we cannot ignore them. I think some of the tactics that we could use to try to influence the behavior is just simply negative lists.

Name and shame of practices that we believe in fact are protectionist in their very nature, and as those economies mature, grow and want a stronger seat at the global table, they need to be ready to play by the global rules, and to call them out, I think, is one of the tactics that could be used to start to influence the behavior.

Chairman CAMP. Thank you. I yield back.

Mr. BRADY. Thank you. Dr. Boustany is recognized.

Dr. BOUSTANY. Thank you, Mr. Chairman.

Mr. Wolff, we are engaging in TPP negotiations without trade promotion authority. In your testimony, you talked a lot about state owned enterprises and the problem it poses.

I guess my question would be given that our Committee has to provide guidance and certainly once the trade promotion authority is in place, we will go forward hopefully with an agreement, what would you like to see in a chapter on state owned enterprises? Can you go into a little more detail there to give us some guidance?

Mr. WOLFF. First there must be no discrimination in regulation. This is a major problem. We see it in Japan. It is true in China and India. The Vietnamese economy, of course, has a huge number of state owned enterprises.

Eliminating discriminatory regulations that favor of SOEs as opposed to private players in the market is one aspect of dealing with the state-owned enterprise problem.

Obtaining market access, where a network is controlled by a state owned enterprise, is equally important. There have to be obligations to have state owned enterprises live up to the national treatment obligations of the country involved.

Obtaining transparency. There is no transparency with respect to the operations or subsidies to state owned enterprises. This is a major problem.

China is the number one example in the world. We have to think about what rules we want to apply to China when we are negotiating the rules in TPP. When the Chinese government makes a pronouncement, those company executives that know they have only one shareholder know exactly what they are supposed to do, and that means—I gave the example of wind energy procurement, wind turbines, in China—don't buy foreign products.

Those are all state owned enterprises that do the procurement. When they stopped buying foreign products, it was in part because there was in China an indigenous innovation policy, which now the Indians are following in their telecom area.

The bid procedures are entirely secret; they are considered a state secret. You can go to prison for revealing those measures.

Transparency is very important. National treatment obligations on the state owned enterprise itself would be very important. Market access in a real way is vital.

We are not against state owned enterprises as such—but if they are going to act in the commercial arena, they ought to be governed by the same rules.

Dr. BOUSTANY. Held to the same standards.

Mr. WOLFF. Yes.

Dr. BOUSTANY. Thank you. Mr. Quigley, I questioned Ambassador Kirk earlier with regard to services. We have a trade surplus with China, some \$7.5 billion in surplus. I personally believe it should be much higher, and I think there is potential room for growth there.

China imposes all kinds of equity limitations in key sectors, banking, insurance, retail, telecom. There are licensing issues and so forth. The list goes on and on.

What are your views on how we can deal with all this and better create opportunities for our services companies in China?

Mr. QUIGLEY. I think the visibility once again is just simply a first step in the right direction, and given the scale of the trading relationship that exists between China and the U.S., I believe we can have discussions related to services and can begin a more disciplined and more open approach to services, and we should not put it in the “too hard” file.

It is just simply so large, and there is mutual benefit that is available, so I think keeping it at the top of the list and pushing on services as one of those areas where we just simply have not invested much time at this point is something that is definitely worthy of the energy of those that want to work on trade policy and trade negotiations.

Dr. BOUSTANY. Thank you. Mr. Krzanich, you mentioned government procurement agreement certainly with China and other countries, the BRIC countries.

I can assure you our Committee is really pushing on the administration to use every bit of leverage it has with these countries to move forward, to see that these countries follow through with their WTO obligations.

Mr. BRADY. Thank you. Votes will be called in the next minute or two, and we want to get to all the Committee Members, so we would like to move this along.

Ms. Jenkins is recognized.

Ms. JENKINS. Thank you, Mr. Chair, and thank you all for being here today.

There is no doubt that China’s currency misalignments is a serious problem, but it seems it is not the single most pressing problem. China maintains a number of discriminatory and distortionary industrial policies that harm U.S. companies and their workers.

In addition to currency misalignment, these include subsidies that distort competition, lack of regulatory transparency, a closed capital account, harmful indigenous innovation policies, failure to adequately protect intellectual property, and many other barriers to U.S. exports and investments.

I would just like each of you maybe to comment, how does the currency rank in terms of other barriers that you face in China, and what do you all consider the most significant barriers that you face?

Mr. Harris, and then down the line.

Mr. HARRIS. The currency itself, I think my customer base that I serve would speak better to that. I can tell you that one of the most alarming events I have ever had in business was when I was with one of the Vitamin C manufacturers in China.

We were negotiating, that was the goal, to negotiate volume and pricing. When they said to us that we have already met with the other three major Chinese Vitamin C producers and they will sell you 10,000, this one will sell you 11,000, this one will sell you 12,000, they already had the meeting as we were flying over, and already had set the price.

Certainly, things of that nature have to be addressed because what happened in our industry was it drove out every Vitamin C manufacturer in the U.S.

That is why I am happy and excited about our companies moving over and manufacturing there because that will eliminate or reduce those types of things from happening.

Mr. KRZANICH. For us, we both import and export out of China. Currency manipulation is not really a big factor for us. I do not consider us really experts on this subject.

From our point of view, I think we think we should take a broader look at China and these countries, how we manage trade. It is much further than just the currency issue itself.

Ms. JENKINS. Thank you. Mr. Quigley.

Mr. QUIGLEY. No comment on the currency issue. I would just simply say that in our business, it is regulatory coherence that we are seeking and getting to those common global standards and then mutual recognition that would be the enabler.

Ms. JENKINS. Fair enough.

Mr. WOLFF. China's undervaluation of its currency, I think, causes most problems in this country—wiping out manufacturing competing with imports that have in effect a 20 percent (or whatever it is today) subsidy.

On entry into China, since we are not competing very often in commodities but in higher value goods, it is other types of barriers that are really the major problem that people have mentioned.

If someone in China will not buy something from a foreign source, if a state owned enterprise will not buy something from the United States, or will not buy something unless it is invented with Chinese technology, then currency values do not matter at all.

Ms. JENKINS. Thank you. I yield back.

Mr. BRADY. Thank you. Mrs. Black.

Mrs. BLACK. Thank you, Mr. Chairman. I am going to be really brief. I just want to follow up on the comments and the dialog that I had with the Ambassador.

Mr. Quigley, this goes to you. I recognize, maybe not right in my district but in Tennessee around me, are very important professional services that are exported.

I do not know that we are really putting a lot of emphasis on that. I know the President in his agenda has looked more at the manufacturing side.

I would just like you for the record to talk about where you see the importance of these professional services being exported, and in particular, how that really helps us with creating more jobs and not just jobs but very well paying jobs.

Mr. QUIGLEY. There is no question that the markets are global and the professional services market is also global. Having the ability to move intellectual property and then also people across Border becomes the great enabler of growing those businesses and at the pace they could grow, so access to movement of talent and VISAs, that we would like to be able to move people here, and also move people from here overseas, and getting to the point where we have a coherent tax policy that enables that becomes the objective.

We at Deloitte, more than half of our jobs are outside the United States, but those firms are actually owned by partners in those individual countries.

For us, I do not view it as a huge impediment, but the ability to move talent does sometimes get in the way, and the ability to share intellectual property across Border.

Mrs. BLACK. With that being said, what would you say would be the number one barrier?

Mr. QUIGLEY. Again, I go back to the regulatory coherence, the inability and the degree of difficulty and frankly the huge costs associated with dealing with separate sets of regulations country by country for a product that is fundamentally viewed for its global nature.

I really hope we can get to regulatory coherence, and that would be a big enabler of continuing to grow the professional services market.

Mrs. BLACK. I hope so, too, for the sake of our American workers for jobs and jobs that pay well.

Thank you. I yield back my time.

Mr. BRADY. Thank you. Mr. Reed, for the final questions.

Mr. REED. Thank you, Mr. Chairman. Thank you to our panel.

If I could focus a little bit on you, Mr. Harris. I come from a rural agricultural based, small business based area of New York State.

You made some comments in your testimony, I believe, about how small business needs to work with the world, I think that is a phrase you kept utilizing.

I am interested, from your frontline perspective and experience and from a small business perspective, and a lot of my constituents being small businesses, what is the most important next step, or what is your vision for a trade policy that could advance the small business opportunities on the world stage?

Mr. HARRIS. Again, I am going to say that we are more small business in the services business. What we do at Harris & Ford is we do the things our customers do not want to do themselves.

We specialize in the small stuff. Logistics, finding synergies, things of that nature.

I am not trying to be evasive, but whatever is done to allow—I mentioned three companies that have really been instrumental, and there are others, in Harris & Ford's growth, but let's say, for example, Kraft. We sell over 500 products and to several countries.

Whatever is done to allow them to do business easier, it is just a pull through effect for Harris & Ford. We get business because you helped them regulatory-wise. Same way with Coke, Gatorade.

Whatever you do that helps them ease their transactions internationally, it helps us as a small business. We patch the tires and we do the little stuff, but we do it well.

Mr. REED. Being a small businessowner myself, I can relate to that.

One last question. Mr. Quigley, you had some suggestions about how WTO was not addressing or utilizing all the tools. You said there was another tool that you envisioned outside of the WTO, I believe, in some testimony to my colleagues.

I just want to delve into that. What specifically would you suggest outside the WTO that could be utilized to address the concerns that the WTO is not doing?

Mr. QUIGLEY. I just think we have a huge opportunity with the colossal market of Europe and the colossal market of the U.S., and a wonderful and robust trading relationship today, to take an U.S.-EU approach to global trade.

If we can in fact build a free trade agreement or other bilateral trading arrangements between the U.S. and Europe, and then we construct it in such a way that third countries could participate, we could start to move the trade agenda forward on the U.S.-EU approach, and key players in Asia would want to join because they want access to that U.S. and European market.

I think there is an opportunity that is not exploited fully there. That is what we hope this high level working group that Ambassador Kirk is co-chairing with Commissioner DeGucht has the potential of doing, and helping to enable global trade through this stronger partnership for the 21st century between the U.S. and Europe.

That is the opportunity we see.

Mr. REED. Mr. Wolff, with your 20 years plus or how many years experience you have, do you see that as an opportunity to develop and promote?

Mr. WOLFF. Absolutely. I am a multilateralist at heart. Doha is stalled. We cannot get as much done there if anything at all. I would look to see what could be done with the EU. I hope they are not looking inward so much because of current financial issues that the EU cannot join hands across the ocean and conclude a good agreement with the United States.

The EU is negotiating with Canada, for example, and getting better market access right across the Border from us in government procurement than we have under NAFTA.

We cannot stand still. I think we ought to prioritize, EU, Canada, Brazil, India, and the largest markets, and improve those agreements where we have some and get agreements where we do not.

Mr. REED. Very good. With that, I yield back.

Mr. BRADY. Great testimony, very insightful. On behalf of Chairman Camp, I want to thank you for being here today.

The hearing is adjourned.

[Whereupon, at 2:48 p.m., the Committee was adjourned.]

[Submissions for the Record follow:]

The Honorable Dave Camp, Letter 1

Congress of the United States
Washington, DC 20515

January 31, 2012

The Honorable Timothy Geithner
Secretary of Treasury
U.S. Department of Treasury
1500 Pennsylvania Ave, N.W.
Washington, D.C. 20520

The Honorable Ron Kirk
United States Trade Representative
Office of the United States Trade Representative
600 17th St, N.W.
Washington, D.C. 20508

Dear Secretary Geithner and Ambassador Kirk:

As you both know from your appearances before our Committees, the list of our concerns with China is long. Among other things, China continues to undervalue its currency, providing an unfair advantage to Chinese exporters and harming U.S. manufacturers and their workers. Today we write to focus on one aspect of this issue: the opportunity in the World Trade Organization (WTO) to discuss the role of exchange rate practices in trade policy.

Specifically, we support ongoing efforts at the WTO to understand the impact on trade of exchange rate policies. The WTO Secretariat's recently concluded literature survey is a positive first step towards understanding the relationship between trade and exchange rate policies. The upcoming symposium in March, hosted under the auspices of the WTO Working Group on Trade, Debt, and Finance, will provide an important venue to deepen and broaden the discussion.

These steps should form the basis for further discussion by the WTO of existing WTO/GATT rules and how those rules could be used to address distortive currency practices. For example, GATT Article XV(4) provides that "parties shall not, by exchange action, frustrate the intent of the provisions of this Agreement." While there may be debate about whether that provision – or others – can form the basis for a WTO dispute against China, further discussions would benefit the United States.

China has actively blocked any discussion of existing WTO/GATT rules in the WTO Working Group on Trade, Debt, and Finance. We encourage the Administration to strongly promote discussion of existing WTO/GATT disciplines through the Working Group and in other appropriate forums at the WTO.

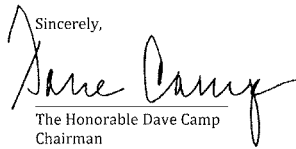
Addressing China's currency policy in a multilateral manner holds the greatest promise for an effective and meaningful solution. The Administration's efforts at the G20 have helped

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to develop an international consensus about how important it is for China to rebalance its economy and allow its currency to more accurately reflect market forces. China will not end its currency undervaluation unless the U.S. seizes opportunities like this to insist it does. Expanding and intensifying discussions at the WTO can further this effort and bring significantly more pressure to bear on China.

We look forward to continuing to consult with both of you on this issue and the full range of other economic issues we face with China.

Sincerely,



The Honorable Dave Camp
Chairman
Committee on Ways & Means
U.S. House of Representatives



The Honorable Max Baucus
Chairman
Committee on Finance
U.S. Senate



The Honorable Dave Camp, Letter 2



FEB 28 2012

The Honorable Dave Camp
 Chairman
 Committee on Ways and Means
 U.S. House of Representatives
 Washington, DC 20515

Dear Chairman Camp:

Thank you for your letter regarding China's exchange rate policies, and, in particular, the upcoming seminar in the World Trade Organization (WTO). We share your concerns; addressing the undervaluation of China's currency is a top priority for the Administration.

In addition to our intensive bilateral engagement, including at the most senior levels, we also have pursued this issue with our allies and partners around the world and through multilateral channels, including the International Monetary Fund, the G-20, and the WTO. To that end, we welcome the WTO seminar as an opportunity to emphasize the importance of market-determined exchange rates in supporting growth and trade. At the seminar, the United States intends to underscore the importance of flexible exchange rates in promoting more balanced global trade and faster and more efficient global adjustment of external imbalances. While the primary focus of the seminar is the impact of exchange rates on trade, rather than a review of countries' exchange rate policies *per se* or the WTO rules, we expect that those issues will continue to be discussed in the WTO, informed in part by the results of next month's seminar. We will keep you and your staff informed as these discussions unfold.

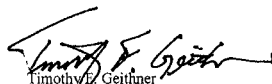
As you noted in your letter, the United States has been the leading advocate in pressing all G-20 members to commit to market-determined exchange rates. At the November 2011 G-20 Leaders Summit in Cannes, G-20 members, including China, committed to "move more rapidly toward more market-determined exchange rate systems and enhance exchange rate flexibility to reflect underlying economic fundamentals, avoid persistent exchange rate misalignments and refrain from competitive devaluation of currencies." China also stated that its efforts to move to a growth model that relies less on exports and more on domestic demand "will be reinforced by ongoing measures to promote greater exchange rate flexibility to better reflect underlying economic fundamentals, and gradually reduce the pace of accumulation of foreign reserves."

Since the Chinese authorities decided in June 2010 to allow the exchange rate to appreciate, in large part because of our efforts, the renminbi (RMB) has appreciated by about 8 percent against the dollar. Taking into account the higher rate of domestic inflation in China than in the United States, the RMB has appreciated against the dollar on a real, inflation-adjusted basis by over 12 percent since June 2010, and about 40 percent since China first initiated currency reform in 2005.


While progress has been made, it is insufficient. We will continue to monitor closely the pace of RMB appreciation and press at every opportunity for policy changes that yield greater exchange rate flexibility, level the playing field, and support a pronounced and sustained shift to domestic demand-led growth in China. This will mean more opportunities for U.S. workers and firms to export to China.

We look forward to continuing to work closely with you and all members of Congress to enable U.S. workers and firms to benefit more fully from our economic engagement with China.

Sincerely,



Timothy F. Geithner
Secretary of the Treasury



Ronald Kirk
United States Trade Representative

Identical letter sent to:
The Honorable Max Baucus

Statement of The National U.S. Arab Chamber of Commerce



National U.S.-Arab Chamber of Commerce
 الغرفة التجارية العربية الأمريكية الوطنية

March 14, 2012

Hon. Dave Camp, Chairman
 House Ways and Means Committee
 U.S. House of Representatives
 1102 Longworth HOB
 Washington, DC 20515

Dear Mr. Chairman:

The National U.S.-Arab Chamber of Commerce (NUSACC) is pleased and honored to present the following views to the Committee for possible inclusion in the record of your hearing on President Obama's Trade Policy Agenda, held on February 29, 2012.

NUSACC was disappointed that virtually no discussion occurred during the hearing on the increasingly important issue of U.S. trade with the Middle East and North Africa (MENA). For much of the past century, this region has had an outsized influence on U.S. strategic interests around the globe. In recent decades, the Arab world has become one of America's most reliable markets, and our Chamber would argue that the advent of the Arab Spring makes it more important than ever that U.S. trade policies serve to satisfy increasing demand in the region for "Made in the USA" goods and services.

Every year, NUSACC analyzes trade data collected by the U.S. Census Bureau. Preliminary findings for last year indicate that U.S. goods exports to the MENA region increased from \$48.77 billion in 2010 to \$56.18 billion in 2011, an increase of 15.2 percent and the highest single-year sales volume ever. The initial results of the Chamber's research suggest that U.S. exports to the Middle East and North Africa continue to grow steadily, despite the economic turbulence of this past year. We are very encouraged by these numbers, and we are cautiously optimistic that America's export trends to the region will continue to move in the right direction.

On a biennial basis, the Chamber releases a three-year trade forecast, entitled *U.S.-Arab Trade Outlook*, which analyzes U.S. export potential for the 22 nations of the Arab world. The data referenced above are consistent with NUSACC's forecasting through the end of next year. According to our Chamber's research, U.S. exports of goods and services to the Arab world are on track to grow to nearly \$117 billion by the end of 2013, an unprecedented level of U.S. sales that marks growth of nearly 85 percent during the 2009 – 2013 period. Equally significant, the U.S. share of total market demand is expected to grow from 8.9 percent in 2009 to 11.2 percent by 2013.

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National U.S.-Arab Chamber of Commerce الغرفة التجارية العربية الأمريكية الوطنية

These trade data bode well for job creation in the United States. Applying National Export Initiative (NEI) metrics, U.S. goods and services to the Arab world are on track to sustain more than one million American jobs -- 340,000 direct and 683,000 indirect jobs -- by the end of next year.

Additional research conducted by our Chamber suggests that four regional demand factors are the core drivers for U.S. exports to the MENA region: infrastructure buildout, upstream energy development and downstream petrochemical projects, consumer spending, and enhanced investments in defense.

- Large, ongoing infrastructure projects are generating significant demand for U.S. goods and services exports to the Arab world. Substantial regional reinvestment in local MENA economies is sustaining the growth of such representative projects as six economic cities being built from scratch in Saudi Arabia, 22 business parks and specialized business zones being developed in Morocco, massive buildout in Qatar as that nation prepares to host the 2022 FIFA World Cup, and the establishment in Abu Dhabi of Masdar City, which will rely entirely on solar energy and other renewable energy sources, with a zero-carbon, zero-waste ecology.
- Satisfying world energy demand requires massive, ongoing regional investments in oil and gas. American exports of equipment and technology will continue to play a crucial role in huge upstream energy development and downstream petrochemical projects.
- Discretionary consumer spending across the MENA region has recovered strongly since the onset of the global financial downturn. Growing confidence among the Arab world's high growth market of some 350 million consumers, many of whom spend at much higher levels than their Western counterparts, holds great promise for U.S. exports to the region.
- Increased security needs in the region have led to major outlays for U.S. defense goods and services. Announcements of pending or intended purchases indicate that the MENA region could purchase defense systems and upgrades valued at up to \$146 billion through 2013.

Youth constitute approximately 70 percent of the Arab world's population, a stunning figure that has huge implications for the Middle East and North Africa for decades to come. With an eye on this demographic bulge, which has been accentuated during this past year's Arab Spring, leaders in the MENA region are investing heavily in education as a means of enhancing employment prospects, spurring economic growth and, ultimately, creating a higher quality of life for the people of the Arab world. U.S. colleges and universities have been second to none in setting up new campuses in the MENA region, particularly after the tragic events of 9/11, when Arab students stopped coming to the United States.

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As a result of these historic shifts, U.S. institutions of higher learning are helping Arab nations to make the gradual – but critical – transition from hydrocarbon-based economies to knowledge-based economies. Nowhere has this been more prevalent, for example, than in the establishment of such institutions as Education City in the State of Qatar, Smart Village in Egypt, King Abdullah University for Science and Technology (KAUST) in Saudi Arabia, and Dubai International Academic City in the United Arab Emirates.

American companies are doing unprecedented levels of business with the Arab world, but our businesses and our government cannot afford to rest on our laurels. Commercial relationships between the MENA region and Asia are flourishing, for example, and all too often these new commercial bridges are being built at the expense of U.S. firms. (It is worth noting that China has out-sold the United States as the top provider of goods to the Arab world for the past several years.) For U.S. companies to hold their own against newfound competition from these growing Asian powers, we need to capitalize on America's commitment to high quality, open our nation's doors wider to trade and investment opportunities, overhaul America's cumbersome and sometimes humiliating visa processes, and engage the U.S. Government at the highest levels to serve unabashedly as an advocate for U.S. business in overseas markets.

The MENA region today may be the most dynamic place in the world. The Arab Spring has created a host of challenges, to be sure, but it has also created remarkable new opportunities. It is heartening to note that, in general, the observable decline in shipments to certain countries in the Arab world this past year has been more than offset by overall gains in U.S. exports to the MENA region. This bodes well for U.S. competitiveness in the region and for growth in employment opportunities here at home.

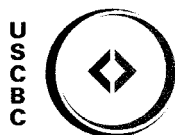
The National U.S.-Arab Chamber of Commerce thanks you for the opportunity to share these observations about the Arab marketplace, Mr. Chairman, and we look forward to working with you in the months ahead to highlight this increasingly important destination for U.S. goods and services.

Sincerely,

David Hamod
President & CEO

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Statement of The US-China Business Council



THE US-CHINA BUSINESS COUNCIL

美 中 貿 易 全 國 委 員 會

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US-China Trade Policy: Issues and Solutions

**Testimony of the US-China Business Council
to the House Committee on Ways and Means
October 25, 2011**

The US-China Business Council (USCBC) is the leading organization that represents American companies doing business in China. Our membership consists of nearly 240 companies in manufacturing, services, agriculture, and resource industries. USCBC has a long history of working with the US government to eliminate market access barriers in China so that American businesses and workers can prosper from that country's tremendous economic growth. To this end, we look forward to continuing to work with Congress to address trade and investment barriers in the world's second-largest economy through appropriate and effective means.

Though we have many challenges in our commercial relationship, China is a cornerstone for US exporters. It is the only major US export market over the past decade to have provided the 15 percent annual growth rate needed to meet the Obama administration's goal of doubling US exports by 2014. At \$92 billion, China was our third-largest export market for goods in 2010—a 468 percent increase since 2000, the last full year before China joined the World Trade Organization (WTO). Add in our exports to Hong Kong, a major through-point for US goods destined for China, and the total reached \$118 billion last year. If US services exports to China are added, the 2010 export figure jumps further to \$139 billion.

That is not the end of the story, however, as US companies also profit from China's growing domestic market through their investments there. Not every company can export to China and be competitive. Lead times, transportation costs, and the need to be closer to customers require many companies to make products in China or provide services from locations in China. Sales of products and services in China by US majority-owned affiliates operating there totaled \$98 billion in 2008, the latest year for which these statistics are available, and have surely grown since then.¹

Add it all up, eliminate overlaps, and China is probably close to a \$200 billion market for US companies. The China market is therefore increasingly important to the health of the US economy, our large and small businesses, our farmers, consumers, and, yes, American jobs. The

¹ Contrary to popular belief, more than 90 percent of sales by US majority-owned companies operating in China over the last decade were to China or other foreign markets, with a mere 8 percent being exported back to the United States. Much of what the US imports from China comes from long-standing Asian suppliers who have relocated their export manufacturing from Japan, South Korean, Taiwan, and other economies to China.

commercial relationship with China has many problems, but the reality of these numbers tells us why the hard work of correctly defining the issues and then identifying appropriate, effective solutions is critical to US interests.

Top Challenges for US Companies in China

Though it has created many economic benefits, the US-China trading relationship is not without challenges. USCBC's most recent survey of its membership on the business environment in China details the importance of the market and the top problems companies face in China (see https://www.uschina.org/public/documents/2011/10/membership_survey_english.pdf).

A summary of some of the key challenges and solutions sought is below.

Indigenous innovation

A good example of how real progress can be made on critical issues is the coordinated advocacy effort on China's indigenous innovation policies. China, like all countries, is interested in fostering innovation to drive economic growth. To achieve that goal, China launched its "indigenous innovation" program in 2006, which has subsequently appeared in a range of PRC policies and regulations, including those related to intellectual property rights (IPR), standards, taxation, and government procurement.

In late 2009 and early 2010, China released several key rules to create lists of favored innovative products that would receive preferences in government procurement. This approach runs counter to international best practices, creates market access barriers for US companies, and would ironically undermine true innovation, rather than enhance it. Once on a product list with market protections, a company may have less motivation to continue to innovate since it is guaranteed sales with no further improvements to its products. Managing numerous product catalogues at the central and local levels is cumbersome, and such periodic lists are quickly outdated as new, innovative products are developed. The only certain outcome is discriminatory treatment in the marketplace and substandard technologies. USCBC, other trade associations around the world, and our respective governments have encouraged China to do away with product lists and follow international best practices for innovation incentives by using non-discriminatory tax, research and development support, and other programs to reach its innovation goals.

The Obama administration efforts, combined with industry's work on the issue, bore fruit this year starting during PRC President Hu Jintao's January 2011 visit to the United States, when China committed to delink its innovation policies from its government procurement preferences. At the Strategic and Economic Dialogue in May of this year, China took the further step of committing to end the use of all product lists, and central authorities began to lobby local governments to adhere to the commitment. USCBC has found that the central government's efforts have produced some positive results, though more remains to be done. Furthermore, around the US-China Joint Commission on Commerce and Trade (JCCT) mid-year meeting in June 2011, the PRC Ministry of Finance invalidated three key procurement measures targeted by USCBC in its advocacy efforts to address indigenous innovation policies. Our bilateral efforts have contributed to this progress, and we encourage members of Congress to support these efforts to get China to move further toward nondiscriminatory innovation policies. It is important for US officials to continue engaging China on this issue through bilateral forums, including the

US-China Innovation Dialogue. Congress should restore funding to the White House Office of Science and Technology Policy to continue engaging China on this issue through that dialogue.

Intellectual property rights

China's IPR situation remains a top concern for US companies. Two-thirds of respondents in USCBC's 2011 survey of China's business environment said that China's inadequate IPR protection impacts their business in some way. We should keep in mind, however, that some areas of China's IPR regime—both the legal framework and some areas of enforcement—have improved over the years. This was particularly notable over last year as 57 percent of survey respondents believed that IPR enforcement improved following the central government's campaign to crack down on IPR violations. That nine-month campaign formally ended in June.

Given the short-term success of the campaign, USCBC believes that the effort should be made permanent and put under the direct supervision of China's State Council to achieve better results nationwide. Penalties should also be increased to levels that effectively deter criminal infringement; China should adopt the international standard of applying criminal penalties in cases of commercial scale.

Although gradual improvements may be occurring in IPR protection, the progress is too slow. In certain industries, the lack of IPR enforcement is existential. The Chinese government needs to take stronger actions to ensure legitimate software is used in all government offices and state-owned enterprises. The cap that limits imports of foreign movies to 20 per year should be eliminated so that legitimate product can reach consumers, rather than force them to buy pirated copies.

Administrative licensing

Foreign companies in China must often jump a wide variety of bureaucratic hurdles to establish and operate their businesses. Companies report that managing the licensing process in China requires an inordinate amount of their time and resources. These challenges include approvals for new or modified products, office licenses and renewals, approvals for different aspects of projects or investments, and licensing for various business administrative functions. Inconsistencies in implementation across different agencies, levels of government, and regions create uncertainties that undermine business planning. Often the licensing requirements for foreign entities differ from those for Chinese companies, raising questions about China's commitment to its national treatment obligations.

USCBC's analysis has found that China's campaign for more transparent and efficient rule-making in recent years has yielded some improvements, but there remain many agencies, levels, and regions of government where opacity, inefficiency, and inequity continue. Licensing issues are diverse and vary across industries. The Obama administration pursues these issues on an individual basis through various JCCT working groups. A new effort by the administration will use the JCCT Commercial Law Working Group to pursue licensing challenges in a cross-cutting manner to find ways to address them. We also believe the lack of equal treatment in licensing should be elevated for attention at the Strategic and Economic Dialogue.

Standards and conformity assessment

Another top area of concern for USCBC companies is China's standards system. Though China has made progress in some areas, foreign companies remain concerned about several trends, including barriers to participate in standards-setting activities and the development of China-specific standards and technical policies that effectively block market access for US companies.

China also requires that most products sold in China be tested for compliance by a Chinese certification body, rather than by an internationally accredited third-party certifier or through self-certification, as is common in other countries. This denies market access for US testing and certification service companies and increases the time and cost burden for businesses producing a variety of goods covered under China's conformity assessment regimes.

Investment restrictions

Investments in China are important for many American companies and complement operations here in the United States, but the opportunities for foreign investment in China are uneven across industries. Though US companies are permitted to establish wholly foreign-owned enterprises in many industries, investments in several key sectors—including agriculture, automobile, chemical, express delivery, insurance, securities, and telecom—are limited to minority ownership or face other restrictions.

China's Catalogue Guiding Foreign Investment in Industry, which governs where foreign investment is encouraged, restricted, or prohibited in sectors across the economy, is a relic of the past for an economy that is seeking to find its place among the world's market economies. China is in the process of revising the catalogue, but recent draft revisions fell short on new market openings, a particular disappointment given commitments by China's leaders over the past year to open its services and other sectors more widely (see Appendix). US officials must continue to press China to further open its economy through the US-China Investment Forum and other government exchanges.

In addition to selectively restricting areas for foreign investment, China factors in "national economic security" during reviews of mergers and acquisitions that involve foreign companies. China's Antimonopoly Law also has provisions that could be used to promote domestic companies at the expense of foreign enterprises. These rules do little to advance China's goals of rebalancing its economy and serve largely to protect the interests of Chinese companies.

We should keep in mind that China is also encouraging its domestic companies to invest in the United States and other overseas destinations. Any US governor or mayor will affirm the value of foreign direct investment in creating jobs and economic growth. US states and cities continually organize delegations to China to attract investment to their local economies. We should ensure that China's central and local government officials and company executives understand the mutual interest in maintaining open and fair investment and trading regimes; treatment of foreign companies in China will influence treatment of Chinese companies here.

To solidify this mutual interest, Congress should encourage the administration to move forward with negotiations on a meaningful bilateral investment treaty (BIT) with China—one that includes strong national treatment provisions, applies to new and existing investments ("pre-establishment"), and applies to all investments except those specifically excluded in the

agreement (“negative list” approach). The Chinese have expressed interest in negotiating a BIT, and doing so provides one of the best opportunities to further open markets for US companies and improve protection for American investments in China.

Transparency

Transparency covers the full extent of a country’s rulemaking system, including the solicitation of public feedback during the creation of new laws and regulations, government decision making, and the availability of information on costs and markets—some of the basic elements of a market economy. The matter impacts a host of issues that affect companies’ daily operations, such as administrative licensing, IPR protection, standards setting, and investment policy. A lack of transparency also exacerbates perceptions of discrimination against foreign companies.

USCBC welcomes efforts by the PRC State Council to improve transparency in PRC government rulemaking, but much work remains. Though the National People’s Congress has fully complied with commitments to post new laws for a 30-day public comment period, PRC ministries and agencies under the State Council have a much poorer record. The Obama administration brings focused attention to this issue each year through the US-China Transparency Dialogue, led by the Department of Commerce’s Office of the General Counsel. As this issue affects multiple areas important to US companies, US officials must continue to press China to improve government transparency.

Market access barriers

Despite the unquestionable growth in US exports to and local sales in China, numerous restrictions remain that limit the products and services foreign companies can provide to the Chinese market. These restrictions include technical barriers, such as China-specific product standards, and administrative limitations, such as denying foreign companies licenses to provide certain goods or services.

US service providers are particularly restricted in China’s market. Increasing the participation of foreign companies in this sector would benefit both our economies by expanding domestic consumption and improving market efficiency in China. With services accounting for about one-third of total US exports, this is an area where meaningful progress will benefit American businesses and workers. Further openings in the financial sector are also critical to resolving longstanding issues such as global imbalances and China’s exchange rate policies. The Strategic and Economic Dialogue meeting in May yielded some progress on insurance and finance, but more work remains to be done on implementation and resolving other ongoing restrictions.

Government procurement

Government procurement is an area where USCBC members consistently see discrimination. Many procurement policies seem designed to promote China’s “national champions” with protected market positions and preferential treatment. Adding another layer are “buy local” policies issued by several provincial- and municipal-level governments. Two developments deserve priority advocacy attention.

First, China agreed during President Hu’s January visit to submit a revised offer this year to join the WTO Agreement on Government Procurement (GPA). In that commitment, China agreed to

include purchases by sub-central entities. GPA entry would help US companies gain better access to China's government procurement market, if China's offer is a meaningful one. To be meaningful, the offer should include a more comprehensive list of government entities covered, procurement thresholds closer to international norms, and a timelier implementation schedule than in China's previous offers. It is important to note that although the GPA's principle of national treatment may help address some issues related to procurement, China's indigenous innovation policies are larger than the limited scope of the GPA. Nevertheless, we encourage the administration to continue working with China and other signatories to pursue robust GPA accession commitments from China.

Second, the PRC government is revising its procurement rules in ways that will affect market access for US companies operating in China. The government is considering new draft rules on domestic content requirements and draft regulations that affect the treatment of foreign-invested companies as domestic enterprises. China should finalize these measures after removing troubling references to indigenous innovation and other problematic areas to ensure appropriate access for US and other foreign companies to this important market.

Is the Exchange Rate the Answer?

USCBC has long advocated for China to have a more market-driven exchange rate. It is critical for China to continue with fundamental financial reforms that would allow it to remove capital controls and have a fully convertible currency. In the meantime, China should move faster to allow the market influences from trade flows to be better reflected in the exchange rate. The Treasury Department has been effectively engaging China on this issue, in coordination with other countries.

Nonetheless, USCBC members have never cited China's exchange rate as a top issue affecting their competitiveness in China, and the exchange rate is probably not the significant factor in the US trade deficit and unemployment that some make it out to be. The renminbi has appreciated over 30 percent since 2005, but the US trade deficit continues to grow. Clearly other factors drive our trade deficit with China, and narrowly focusing on the exchange rate to solve the US trade deficit is the wrong approach.

Recognizing it is one of the most contentious issues in the US-China relationship, however, USCBC has long advocated for resolving the matter through appropriate and effective channels. Some US policy makers think that the United States should enact legislation that imposes tariffs on imports from China to offset currency undervaluation. The application of duties on this basis is of questionable WTO legality. It would also be a subjective process and fraught with politicization as it would declare that the Department of Commerce has the authority to determine the "true" value of another nation's currency despite a wide range of estimates among economists. Such estimates are invariably subjective and vary greatly depending upon the assumptions.

More important than the legal and technical issues with the bill is its ineffectiveness toward achieving its supporters' two stated goals of changing PRC policies and creating American jobs. The first represents a miscalculation of the leverage that the bill will give US negotiators over

China. Though the United States accounts for nearly 20 percent of all PRC exports, the Congressional Budget Office found last year when this committee considered currency legislation that its impact would be limited since “many imports do not injure domestic firms because there are no competitors currently operating in the United States.” Thus the lengthy legal process for the handful of industries that would be eligible for relief will have an equally insignificant economic impact on China. The political reaction, however, could result in unnecessary economic repercussions for US exporters who are likely to face both overt and subtle retaliation.

In addition, much of what we import from China is conducted via processing trade. Components and other inputs are imported into China (from the United States and elsewhere), processed into a finished product, then re-exported to the United States and other destinations. This is one reason why the exchange rate has a limited impact on our bilateral trade balance. The imported inputs are priced in US dollars, and the exported finished product is priced in US dollars, so only the small amount of labor value-added in China is affected by exchange rate appreciation.

Claims of job creation in the millions are also unfounded because they assume that production of goods imported from China would shift here. Given the nature of what we import from China, that change is unlikely to happen in any significant way. A recent UBS report explains why a major shift in production to the United States is unlikely to happen if the cost of Chinese imports rises. In analyzing the trade impact of rising Chinese wages, UBS “identified the obvious ‘winners’ from this trend, i.e., other lower-income Asian neighbors, many of whom have indeed been picking up market share” from China. UBS further added that:

China may be giving up US market share in low-end manufacturing but foreign suppliers in aggregate are not. Quite the opposite, as best we can tell overall foreign share gains have actually *accelerated* over the past two years. In short, US workers are very clearly not the beneficiaries of rising Chinese wages.

The proposed legislation is thus more likely to be a jobs bill for Vietnam and other low-cost producers.

Recommendations for Action

Achieving policy results with China is often difficult, frustrating, and time consuming. Given the importance of China to our economic future, the hard work to achieve results is worth the effort. As we consider ways to accelerate progress on the issues of concerns, however, we should be mindful that unilateral actions that might benefit one group of Americans frequently hurt other Americans. Picking winners and losers among ourselves to address problems with China seems counterproductive and usually results in divisive policy options.

USCBC, with its 38 years of experience, believes that the best course of action for our country's overall approach to China consists of an increased advocacy effort involving the US government, the private sector, and multilateral coalitions, and the continued use of effective, WTO-consistent trade remedies when good-faith negotiations fail.

More effective advocacy

If there were a single agency or official that controlled China's economic policies, it would be easy to structure and target our advocacy efforts. Unfortunately, the bureaucratic owners of these policies are many and diffuse throughout the PRC government. We therefore need to pursue consistent, sustained bilateral dialogue and expand it to include the range of senior officials and agencies that devise and impact trade and industrial policies.

The simple fact is that the breadth and depth of the relationship had outgrown the bilateral negotiating and dialogue structure of the past two decades, and the Obama administration is correctly pursuing a path of revamping and expanding the structure to better fit today's reality.

As this structure develops, however, several other features are needed to improve the prospects for success:

- Consistent and supportive engagement at the highest levels of the PRC government on the need for a level playing field and further economic reforms. It is important that messaging on these broad concepts is done at the levels above the bureaucratic silos.
- Close US interagency coordination to ensure consistent, sustained engagement and negotiation throughout the year. This may require an active White House role.
- Private sector advocacy directly to the PRC government. USCBC will continue to press for policy changes that will level the playing field for US companies. USCBC's board of directors was recently in China doing just that in meetings with Premier Wen Jiabao and other senior PRC government officials.
- Multilateral consistency on the issues. US companies are not alone in facing market access barriers in China, and the US government should not be alone in seeking to have those barriers eliminated. Coordinating messaging with other governments can work, as we have seen with some of the modifications that China has made to its indigenous innovation rules. We should build upon that model.
- Finally, US leadership on investment and trade openness. We must not pursue protectionist policies or actions that will undermine our credibility and give China an excuse to continue on their own protectionist path.

Legally sound remedies

When good-faith dialogue fails to resolve issues, USCBC supports using legally sound trade remedies and dispute settlement mechanisms to address concerns. US companies have the right to seek assistance by petitioning the Department of Commerce to apply antidumping and countervailing duties to products they suspect are unfairly supported by PRC government policies. These WTO-legal remedies are intended to provide a fair opportunity for both sides to argue over objectively established criteria. These actions are consistent with and important to a rules-based trading system, if duplicative penalties are avoided.

To that end, we should keep in mind that US antidumping rules for nonmarket economies, which are employed in cases involving goods from China, calculate the "normal value" of a product. They are not based on any undervalued Chinese costs or prices, but on the value of the costs and prices of that product as if it were produced in a comparable market economy. That comparison between the normal value and the actual delivered US price from the nonmarket economy (which includes any benefit from an undervalued currency) produces the antidumping margin. As a

consequence, US law does not need to change to address concerns about China's exchange rate—the law already provides such a remedy.

The WTO's dispute-settlement process is another tool for the US government and US companies to use when good-faith bilateral negotiations fail. USTR has taken twelve cases to the WTO against China and has won four; four others were resolved by China before WTO action was required; and four are still pending. USCBC has consistently supported WTO cases when well-defined, winnable, and supported by industry and will continue to do so in the future.

Congressional support

The administration is not the sole driver of US-China trade policy. Congress has an important role to play and can help achieve meaningful results in several ways.

First, Congress should increase resources for US trade agencies. To better enforce our trade rights, Congress should increase funding to USTR and other agencies so that they can effectively pursue American rights through bilateral engagement and under the WTO. The tremendous growth in China's economy and in the size of our commercial relationship has not been matched by the capacity and expertise needed.

To help US companies better access the opportunities of China's market—particularly for small and medium-sized companies—Congress should also increase funding to the US Foreign Commercial Service so that it can expand its support presence in China. Such a proposal was put forth in the US-China Market Engagement and Export Promotion Act (HR2310), introduced in the last Congress by Representative Rick Larsen and now Senator Mark Kirk. Though our nation is looking for ways to tighten its belt, improving the capacity of our government to promote and defend the rights of American businesses and workers with China will yield great returns.

Second, Congress, the administration, and the private sector should better coordinate to reinforce our shared goals on improved market access and leveling the playing field. It is vital that China hear from all three constituencies—the administration, Congress, and the private sector—on the importance of these issues. American companies are on the front lines of dealing with these issues. Better coordination between the US public and private sectors on these issues will help create a more comprehensive yet focused approach to the US-China commercial relationship.

Finally, members of Congress should also directly engage with PRC government officials and their counterparts in the National People's Congress to raise these concerns. Congressional delegations that travel to China often meet with high-ranking members of the PRC government. These meetings are an important addition to engagement from the administration and private sector and help ensure China has a more comprehensive understanding of our nation's views and concerns.

Conclusion

At a time of high unemployment it is easy to cast blame abroad, but we must be honest and realistic in how we deal with the challenges we face. Most of the answers to maintaining America's economic leadership depend upon what we do here at home to get growth going

again. Others require us to open new markets by resolving international trade issues in constructive ways that take into account the full complexities of the global marketplace—not misguided unilateral policies that would result in job losses.

Our bilateral commercial relationship with China plays an important role in the recovery and future growth of the US economy. It will be difficult to meet President Obama's goal of doubling US exports by 2014 without it. USCBC members are committed to the Chinese market as one that is important to their businesses' overall economic health, but our members have serious concerns about the policy trends there that favor domestic companies. Our members want solutions to these specific problems, however, rather than sanctions that would disrupt the relationship with little gain. Addressing the issues directly through bilateral and multilateral channels is the best way to support American businesses and workers.

There is no silver bullet or magic wand that will solve many of these problems easily. Resolution of these concerns requires Congress, the administration, and business leaders to deliver a strong overall message to China's top leadership through sustained and expanded engagement on the various specific issues we face. We must build a stronger foundation with China by expanding trade dialogues, promoting US products and services, negotiating a meaningful BIT and GPA accession, and resisting calls for protectionism within our own country that undermine the credibility of our efforts. As challenging as it may be, this relationship is worth the effort.

Appendix:**China's Ownership Restrictions on US and Other Foreign Investors**

November 2011

While China's entry into the World Trade Organization in 2001 opened many sectors to foreign investment, significant ownership restrictions remain in many sectors. This list covers many of China's existing and proposed restrictions, largely from the Catalogue Guiding Foreign Investment.

Note: All items are from the April 2011 draft Catalogue Guiding Foreign Investment except those marked with an asterisk, indicating that ownership restrictions are found in other policies and regulations.

SECTOR	Joint Venture (JV) with Chinese Company Required	JV Required, Foreign Share Limited to Minority	Specific Foreign Ownership Cap (if any)
Manufacturing			
<i>Agricultural food processing</i>			
1. Processing of edible oils from soybean, rapeseed, peanut, cottonseed, and tea seed		X	
2. Manufacture of biofuels (ethanol and biodiesel)		X	
<i>Beverage manufacturing</i>			
3. Manufacture of yellow rice wine and famous and high-quality distilled spirits		X	
<i>Tobacco processing</i>			
4. Cellulose diacetate fiber and strip processing	X		
<i>Papermaking and paper product industry</i>			
5. Production under the forest paper integration model of chemical wood pulp with single assembly line capacity of 300,000 tons or more annually and chemical mechanical wood pulp with single assembly line capacity of 100,000 tons or more annually, as well as high-quality paper and cardboard produced simultaneously	X		
<i>Printing and copying</i>			
6. Printing of published materials		X	

<i>Chemical raw materials and chemicals manufacturing</i>			
7. Ethylene manufacturing with annual production of 1 million tons or more		X	
8. Coal-liquided oil with annual output of more than 3 million tons, coal-liquided methanol and dimethyl ether with annual output of more than 1 million tons, and coal-liquided olefins with annual output of more than 600,000 tons		X	
<i>Medical and pharmaceutical products manufacturing</i>			
9. Manufacture of anesthetics and Type I psychoactive drugs		X	
<i>Nonferrous metal smelting and processing manufacturing</i>			
10. Smelting and separation of rare earths	X		
<i>General equipment manufacturing</i>			
11. Manufacture of wheeled and crawler cranes of 300 tons or more	X		
12. Manufacture of wheeled cranes and crawler cranes less than 500 tons and 600 tons, respectively	X		
<i>Specialized equipment manufacturing</i>			
13. Manufacture of large-scale coal chemical industrial equipment sets	X		
<i>Transportation vehicle and equipment manufacturing</i>			
14. Manufacture of automobiles, specialized motor vehicles, agricultural transportation vehicles, and motorcycles*	X		50%
15. Manufacture of R&D of electronic equipment for autos: vehicle electronic bus and networking technology	X		
16. Manufacture of R&D of electronic equipment for autos: electronic controllers for electric-powered steering devices	X		
17. Manufacture of R&D of electronic equipment for autos: integrated electronic circuit systems	X		
18. Production of critical spare parts for motorcycles with high-volume engine displacement (displacement of more than 250 ml): motorcycle electronically controlled fuel injection technology	X		
19. Railway transportation equipment	X		

20.	Design, manufacture, and maintenance of civil aviation airplanes: airplanes for main and branch lines		X	
21.	Design, manufacture, and maintenance of civil aviation airplanes: planes for general use	X		
22.	Design and manufacture of civil aviation helicopters: more than 3 tons		X	
23.	Design and manufacture of civil aviation helicopters: less than 3 tons	X		
24.	Manufacture of aircraft for ground or water surface effects		X	
25.	Design and manufacture of unmanned aircraft and aerostats		X	
26.	Design, manufacture, and maintenance of airplane engines and critical parts and auxiliary power systems	X		
27.	Design and manufacture of civil aviation carrier-borne equipment	X		
28.	Design of cruise ship and deep ocean (deeper than 3,000 meters) engineering devices	X		
29.	Repair and manufacture of oceanic engineering equipment (including modules)		X	
30.	Design of low- and medium-speed diesel engines and related parts for ships	X		
31.	Manufacture of low-, medium-, and high-speed diesel engines and related parts for ships		X	
32.	Design and manufacture of machinery for ship cabins and decks		X	
33.	Manufacture and design of yachts	X		
34.	Repair, design, and manufacture of ships (including parts)		X	
<i>Power generating machinery and equipment manufacturing</i>				
35.	Manufacture of key auxiliary devices for supercritical thermal power plants exceeding 1 million kW	X		
36.	Manufacture of key equipment for nuclear power plants at the 1 million kW level: Nuclear Phase I and Nuclear Phase II pumps and valves	X		
37.	Manufacture of power transmission and transformer equipment	X		
38.	Manufacture of complete sets of equipment and key equipment for new-energy power generation	X		
39.	Manufacture of large pump storage units at 350 MW and higher rated power	X		
<i>Communication equipment, computer, and other electronics manufacturing industry</i>				
40.	Manufacture of air-traffic control equipment	X		
41.	Design and manufacture of civil satellites		X	

42. Manufacture of satellite payloads		X	
Finance and Insurance			
43. Banking (shareholding in an existing Chinese bank)*		X	20% for any one foreign investor; 25% for all foreign investors
44. Life insurance companies	X		50%
45. Securities companies (limited to underwriting A shares and underwriting and transacting B shares, H shares, and government and corporate securities)		X	33.3%
46. Stock investment fund companies		X	49%
47. Futures trading companies		X	
Leasing and Business Services			
48. Accounting and auditing	X		
49. Market research	X		
Transportation, Shipping, Storage, Telecommunications, and Postal Industries			
50. Construction and operation of main line railroad networks		X	
51. Construction and management of branch railway lines, local railways and bridges, tunnels, ferry facilities, and station yard facilities	X		
52. Construction and management of civil airports		X	
53. Air carrier shipping companies		X	
54. General purpose airline companies serving the agriculture, forestry, and fisheries industries	X		
55. Periodic and non-periodic international marine transportation services		X	
56. Passenger train transportation companies		X	
57. Water transportation companies		X	
58. General-use airline companies for photography, prospecting, and industrial purposes		X	
59. Telecom companies: value-added telecom services	X		50%
60. Telecom companies: basic telecommunication services		X	49%
Wholesale and Retail Trade			
61. Retail operations of more than 30 chain stores that sell different types and brands from multiple suppliers (types include publications, auto, pharmaceutical, pesticide, fertilizer, refined oil, grain, vegetable oil, sugar, and cotton)		X	49%
62. Distribution of audio-visual products (except films)	X		
63. Shipping agents		X	
64. Foreign freight forwarders	X		

Mining			
65.	Exploration and development of coal bed methane; use of mining gas	X	
66.	Exploration and development of oil and natural gas	X	
67.	Development of low-permeation oil and gas fields (deposits)	X	
68.	Development and application of new and other relevant technology to increase crude oil extraction	X	
69.	Development and application of new technology in oil exploration and development, such as exploring, drilling, well logging, measuring while logging, and down-hole operations	X	
70.	Exploration and development of oil shale, oil sand, heavy oil, ultra heavy oil, and other non-conventional oil resources	X	
71.	Exploration and development of unconventional natural gas resources such as shale gas and seabed gas hydrate	X	
72.	Surveying and mining of special and rare coal		X
73.	Surveying and mining of barite	X	
74.	Mining of manganese (polymetallic) nodules and sea sand		X
Real Estate			
75.	Development of land	X	
Electricity, Gas, and Water Production and Supplies			
76.	Construction and management of nuclear power stations		X
77.	Construction and operation of electricity grids		X
78.	Construction and management of gas, heat supply, and water drainage networks in cities with a population of more than 1 million		X
Water Conservancy, Environment, and Public Infrastructure Management Services			
79.	Construction and management of comprehensive water-conservancy hubs		X
80.	Construction and management of metro, light rail, and other urban rapid transit systems		X
Agriculture, Forestry, Animal Husbandry, and Fishery			
81.	Cultivation and breeding of Chinese medicinal crops	X	
82.	Selection and breeding of new types of agriculture goods, and production and management of seeds		X
83.	Processing of precious wood	X	
Scientific Research, Technology Services, and Geological Survey Industries			
84.	Surveying and mapping companies		X

85. Photography services (including aerial photography and other stunt photography services, but not aerial photography for surveying and mapping)	X		
Education			
86. Institutions of higher education	X		
87. Basic secondary (high school) educational institutions	X		
Culture, Sports, and Entertainment Industries			
88. Operation of performance venues		X	
89. Radio and television program and film production	X		
90. Construction and management of movie theaters		X	
91. Performance agent companies		X	
92. Operation of entertainment venues	X		

Statement of Coalition to Enforce Antidumping & Countervailing Duty Orders

Statement on Behalf of the Coalition to Enforce Antidumping & Countervailing Duty Orders United States House of Representatives Committee on Ways & Means

February 29, 2012

The Coalition to Enforce Antidumping & Countervailing Duty Orders (the “Coalition”) applauds the work of the Ways & Means Committee in reviewing President Obama’s Trade Policy Agenda. We are particularly interested in trade enforcement. In order to be successful, our global trading structure must be rules-based and those rules must be enforceable, and effectively enforced. One costly example of the lack of effective enforcement is with respect to U.S. trade remedies. Evasion of antidumping (“AD”) and countervailing duties (“CVD”) costs the U.S. Treasury hundreds of millions of dollars every year and injures domestic industries that have already won a hard-earned trade remedy and yet are still competing against goods that are brought illegally into the United States.

The Coalition consists of companies and associations from 12 U.S. industries. Each member represents a U.S. industry that has suffered material injury, or been threatened with material injury, by reason of unfairly-traded imports. In some cases, these imports have also been found to be unfairly subsidized. In each case, the products are subject to AD and/or CVD orders.

Each member of the Coalition has invested years and enormous amounts of company resources – both financial and human – working to obtain AD/CVD orders to staunch the flow of unfairly-traded imports. Our members have succeeded in satisfying rigorous statutory requirements before two separate federal bodies – the Commerce Department and the United States International Trade Commission – only to find that the products subject to the AD/CVD orders continue to find their way into the U.S. without paying the duties imposed by the United States Government, and that are owed by U.S. importers.

Duties are being evaded by unlawfully transshipping the goods through third countries that are illegally identified as the country of origin; by falsifying shipping documents to misrepresent the country of origin or to misclassify the goods; and, by performing minor or insignificant operations in a third country. We suspect that many other “creative” means exist to illegally evade the duties imposed on the goods by the U.S. Government.

Our members’ experiences demonstrate a fundamental failure by Commerce and CBP to timely and effectively enforce AD and CVD orders. The failure of effective enforcement has resulted in the loss of millions of dollars of dumping duties to the U.S. Treasury. Just within eight of the Coalition’s 12 member industries, we estimate that over \$400 million in duties is not paid each year, primarily due to illegal transshipment schemes that send subject merchandise through Taiwan, Malaysia, Korea and other Southeast Asia countries.

Our members have presented CBP, and, in some cases, ICE, with compelling evidence of duty evasion, only to see the apparent evasion continue – and grow ever more blatant. Our members’ AD/CVD orders are not being adequately enforced, and our industries are continuing to be harmed by unfairly priced or subsidized goods that enter the United States without paying lawfully-owed duties. This has forced our members into the position of trying to enforce our own orders, by collecting and presenting the overwhelming evidence of wrongdoing to CBP and others. Some of the material we have found is shocking – including, for example, emails from manufacturers with offers to transship and logistics company websites explaining the processes used to avoid the antidumping duties.

With such blatant resources readily available to facilitate evasion of AD/CVD duties imposed by the U.S. Government, it is not surprising that the Coalition’s members continue to see goods subject to these

AD/CVD orders come into the United States without paying the duties AND being sold, for example, at the same prices as those already found by the Department of Commerce to be "less than fair value". What is surprising is that, despite repeatedly presenting CBP with specific evidence of these practices, the duty evasion continues and grows, with little or no indication that anything is being done to stop it by the very agencies charged with enforcement.

Apart from representing a significant amount of revenue that is owed to the U.S. Treasury, if the proper duties were collected on these imports, importers who have become so dependent upon dumped imports would no longer be competitive with domestic manufacturers. American workers would be producing and delivering additional products and earning additional wages and benefits. Additional jobs would be created in the supply chain, and in the communicated in which these workers are employed.

On November 8, 2010, Senator Ron Wyden released a report directly examining this issue, entitled **Duty Evasion: Harming U.S. Industry and American Workers** (the "*Wyden Report*"). The Wyden Report details multiple examples of duty evasion schemes that are being offered and used to undermine the effectiveness of U.S. trade laws by exporters, importers and logistics companies.

Such illegal transshipment and related schemes not only damage U.S. industries and their workers, by denying them the legally-contemplated remedial effect of our AD/CVD laws, but also adversely affect legitimate foreign manufacturing companies – the presence of illegally transshipped products in foreign markets will drive down prices and crowd out legitimate producers in other countries.

We recognize that our government, and CBP and ICE in particular, are tasked with multiple missions that place significant demands on their personnel and resources. Effective enforcement of the trade laws – and specifically AD and CVD orders – is critical to the ability of our companies and industries to remain competitive, and to the overall health of our national economy. CBP lists AD/CVD enforcement as a "priority trade issue" – we agree with this characterization, and submit that it should be treated as such.

To be very clear, this issue has nothing to do with trade philosophy. It has everything, however, to do with enforcement of the law. Failing to do so sends a signal to our largest trading partners that our government is willing to turn a blind eye on such unlawful activities. It sends a signal to U.S. industries and workers that our government is unwilling or unable to enforce its own laws. It also sends a signal to U.S. industries and workers that our government expects them to not only bring and win trade cases against unfair imports, but to then also personally attempt to enforce the AD and CVD orders that result.

The Coalition is committed to helping solve these problems in any way possible, and we thank the Committee on Ways & Means for holding this important hearing.

Respectfully submitted,

The Coalition to Enforce Antidumping & Countervailing Duty Orders

Please direct any correspondence or questions for the Coalition to the attention of:

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Coalition to Enforce Antidumping & Countervailing Duty Orders



American Spring Wire Corporation – Bedford Heights, Ohio
Order on *prestressed concrete wire strand* from China, Brazil, India, Korea, Mexico, and Thailand



GEO Specialty Chemicals – Lafayette, Indiana
Order on *glycine* from India, Japan, and South Korea



Insteel Industries – Mt. Airy, North Carolina
Order on *prestressed concrete wire strand* from China



JMC Steel Group – Beachwood, Ohio
Order on *circular welded carbon-quality steel line pipe* from China



Leggett & Platt, Incorporated – Carthage, Missouri
Order on *uncovered innerspring units* from China, South Africa, and Vietnam



M&B Hangers – Leeds, Alabama
Order on *steel wire garment hangers* from China



Mid Continent Nail – Poplar Bluff, Missouri
Order on *steel nails* from China



NUCOR Corporation – Charlotte, North Carolina
Orders on *steel and steel products, various*



Seaman Paper – Otter River, Massachusetts
Order on *tissue paper* and *crepe paper* from China



SSW Holdings Company – Elizabethtown, Kentucky
Order on *kitchen appliance shelving racks* from China



Southern Shrimp Alliance – Tarpon Springs, Florida
Order on *frozen or canned warmwater shrimp* from China, Brazil, Ecuador, India, Thailand and Vietnam



Vulcan Threaded Products – Pelham, Alabama
Order on *carbon steel threaded rod* from China

Statement of Business Roundtable



**Statement of Business Roundtable for the Record
Committee on Ways and Means
Hearing on President Obama's Trade Policy Agenda
February 29, 2012**

**The Honorable John M. Engler
President, Business Roundtable**

Business Roundtable respectfully submits for the written record of this hearing the attached international trade and investment policy section of its March 2012 *Taking Action for America* report. That report provides a comprehensive plan for U.S. economic growth and job creation. The entire report is available at www.brt.org/takingaction.

Business Roundtable (BRT) is an association of chief executive officers of leading U.S. companies with over \$6 trillion in annual revenues and more than 14 million employees. BRT member companies comprise nearly a third of the total value of the U.S. stock market and invest more than \$150 billion annually in research and development – nearly half of all private U.S. R&D spending. Our companies pay \$163 billion in dividends to shareholders and generate an estimated \$420 billion in sales for small and medium-sized businesses annually.

OPEN MARKETS FOR INTERNATIONAL TRADE AND INVESTMENT

Fast Facts

- In 2008, more than 38 million jobs in America — more than one in five — depended on international trade — exports and imports.ⁱ
- In 1992, a year before the implementation of a series of U.S. bilateral, regional and multilateral trade agreements, the total of trade-related jobs in the United States was only 14.5 million.ⁱⁱ
- The growth of 24 million new trade-related jobs for U.S. workers in two decades demonstrates clearly that trade is an important engine for economic growth and job creation.
- In 2009, more than 275,000 U.S. companies exported merchandise to customers abroad, and nearly 180,000 U.S. companies imported raw materials, components and finished products for U.S. manufacturers, services providers and consumers.ⁱⁱⁱ
- Exports also support higher-paying jobs. Positions in the manufacturing sector linked to the export of goods pay on average 18 percent more than other jobs.^{iv}
- Trade agreements are essential to creating economic and strategic benefits for the United States.

U.S. exports represent a significant share of U.S. GDP and have increased over time, showing the importance of exports to U.S. economic growth and job creation.



Source: U.S. Department of Commerce, Bureau of Economic Analysis

Existing U.S. trade agreements represent a large share of U.S. exports, and there is room for more agreements.



Source: Bureau of Economic Affairs, Foreign Trade Division, Exports to Foreign Countries, U.S. State Department

- The Uruguay Round of multilateral trade negotiations, which resulted in the creation of the World Trade Organization (WTO), was projected to add at least \$70 billion to global economic output. More than a quarter of this gain — \$19.8 billion — was estimated to accrue to the United States.^v
- About 40 percent of U.S. exports now go to the nation's Free Trade Agreement (FTA) partners, and U.S. exports to FTA partner countries are growing faster than U.S. exports to countries that do not have FTAs with the United States. In 2011, the United States had a roughly \$50 billion manufactured goods trade surplus with its 17 FTA partner countries combined.^{vi}
- The U.S. FTAs in effect in 2008 (before the global recession) generated \$305 billion in U.S. output (2.1 percent of GDP), expanded U.S. exports of goods and services by \$463 billion, and supported 5.4 million U.S. jobs.^{vii}
- The recently approved FTAs with South Korea, Colombia and Panama are expected to increase U.S. exports by more than \$10 billion and reinforce important national security and foreign policy relationships.^{viii}
- Investment in the United States is also essential to economic growth and job creation.
- U.S. affiliates of foreign companies employed 5.3 million Americans in 2009 — 4.7 percent of private-sector employment.^{ix}
- In 2007, more than 63 million^x Americans worked for U.S. multinational companies — either directly or through their supply chains — and U.S. multinational companies have accounted for nearly one-third of the growth of real private-sector GDP since 1990.^{xi}
- With more than 95 percent of the world's population^{xii} — representing 80 percent of the world's purchasing power^{xiii} — outside the United States, U.S. economic growth and job creation depend on expanding U.S. trade and investment opportunities, so U.S. companies can sell more American products and services to these customers.

Vibrant and open markets for international trade and investment are a necessary prerequisite for generating new economic growth and job creation opportunities for U.S. businesses and workers. Increased use of bilateral and regional trade and investment agreements with like-minded countries and a strong system of multilateral agreements and rules under the WTO create these opportunities by eliminating trade and investment barriers and preventing discriminatory treatment of foreign goods, services and investment. In contrast, measures that close off markets from competition or are discriminatory quickly dampen international commerce and undermine

economic growth and job creation. International trade and investment agreements are also essential to ensuring fair and competitive business practices across countries. They provide the rules under which the United States and its businesses and workers can enforce their rights to open markets and prevent discriminatory treatment.

“Open markets are essential for U.S. economic growth and job creation, and international trade and investment agreements are critical tools to open markets and keep them open.”

*- Douglas R. Oberhelman,
Chairman and CEO,
Caterpillar Inc., and Chair,
Business Roundtable
International Engagement
Committee*

The United States initially led the way in using bilateral and regional trade agreements to expand trade quickly by opening markets more deeply and setting strong rules for international commerce. Given that 95 percent of the world’s population lives outside the United States and the rapid rise of the middle class in China, India, Brazil and other emerging markets, the United States needs to lead the way again. Today, all our major trading partners have aggressive bilateral and regional negotiating strategies to compete more effectively for these customers and grow their own economies. For instance, according to the WTO, 297 bilateral and regional trade agreements are currently in force internationally, with another 192 announced or under negotiation.

Until this year, the United States had only 11 regional and bilateral trade agreements in force. The recent passage of trade agreements with South Korea, Colombia and Panama and the ongoing Trans-Pacific Partnership negotiations will help U.S. companies and workers keep pace with their foreign competitors in opening markets for U.S. businesses and workers. However, they are not enough to help U.S.

businesses and workers be competitive in world markets and to ensure that high U.S. standards for trade are adopted globally.

For U.S. companies and workers to grow their exports, maintain and create jobs, and improve their international competitiveness, the United States needs an active trade and investment policy designed to open foreign markets and keep them open. For many U.S. exporters — both small and medium enterprises and larger companies — and their workers, U.S. export credit financing from the U.S. Export-Import Bank is a critical piece of such a policy. The U.S. Export-Import Bank enables them to sell their goods and services to foreign customers in today’s highly competitive international marketplace, where many foreign competitors enjoy strong export credit support from their own countries. For example, in FY2011, the bank facilitated roughly \$41 billion in U.S. export sales by more than 3,600 U.S. companies, supporting nearly 290,000 U.S. jobs.^{xiv}

To succeed, a robust strategic trade policy requires U.S. domestic policies that will build a highly skilled workforce, strengthen America’s leadership in research and development, enforce and

protect U.S. intellectual property rights around the world, and institute globally competitive corporate tax policies. In addition to leveling the playing field for U.S. companies and workers competing abroad, improved access to foreign markets will spur domestic output and the creation of high-paying jobs in America. These benefits do not merely flow to large multinational companies. Indeed, as U.S.-based multinationals expand, they source more inputs from small businesses and the local communities that depend on them.^{xv}

Competition breeds innovation, and one of America's greatest comparative advantages is its ability to generate new ideas, products and services. Supporting the nation's entrepreneurs, global companies, local businesses and their workers will require a strong and proactive commitment from political leaders to pursuing a forward-looking and sustained trade and investment agenda.

Solutions

- Develop and implement active international trade and investment initiatives to help U.S. companies and workers increase their competitiveness in international markets and ensure that U.S. and foreign markets remain open for investment:
 - Provide the President with new and updated international trade and investment negotiating authority;
 - Aggressively pursue strategic bilateral and regional initiatives like the ongoing Trans-Pacific Partnership and a proposed Trans-Atlantic Partnership;
 - Revitalize multilateral and plurilateral negotiations at the WTO;
 - Vigorously enforce U.S. rights to open markets and nondiscriminatory treatment under existing and future international agreements; and
 - Grant permanent normal trade relations status to Russia.
- Constructively engage China and other emerging growth countries:
 - Target the elimination of market access barriers and discriminatory treatment of exporters and investors through more dynamic bilateral, regional and multilateral initiatives, including investment treaty negotiations;
 - Enforce U.S. rights under international trade and investment rules to ensure that U.S. companies and workers are not disadvantaged by discriminatory foreign policies, such as indigenous innovation and other local preference requirements, and that countries comply with those rules; and

- Enhance multilateral efforts to address currency issues, and resist counterproductive unilateral currency-related sanctions.
- Reauthorize the U.S. Export-Import Bank on a long-term basis before its current short-term extension expires, with a sufficient increase in its lending cap, so it can continue to help U.S. exporters compete for sales abroad and support the U.S. jobs that depend on those sales.
- Eliminate U.S. regulatory impediments to exports, including through export control reforms.
- Modernize and reform U.S. domestic policies along the lines proposed in the other sections of BRT's March 2012 *Taking Action for America* report to help U.S. companies and workers better compete globally to expand the U.S. economy and support jobs in America.

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^{vi} Calculated based on tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission. Retrieved from the U.S. International Trade Commission "Dataweb" on February 10, 2012

^{vii} Baughman, L., & Francois, J. (2010). *Opening markets, creating jobs: Estimated U.S. employment effects of trade with FTA partners*. Washington, DC: U.S. Chamber of Commerce. Retrieved from www.uschamber.com/reports/opening-markets-creating-jobs-estimated-us-employment-effects-trade-fta-partners

^{viii} U.S. International Trade Commission. (2007). *U.S.-Korea Free Trade Agreement: Potential economy-wide and selected sectoral effects*. Washington, DC. Retrieved from <http://goo.gl/yclDhP>; and U.S. International Trade Commission. (2006). *U.S.-Colombia Trade Promotion Agreement: Potential economy-wide and selected sectoral effects*. Washington, DC. Retrieved from <http://goo.gl/CkRTI>

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³⁶ Business Roundtable. (2011). *Taxation of American companies in the global marketplace: A primer*. Washington, DC. Retrieved from <http://businessroundtable.org/studies-and-reports/taxation-of-american-companies-in-the-global-marketplace-a-primer>

³⁷ McKinsey Global Institute. (2010). *Growth and competitiveness in the United States: The role of its multinational companies*. Washington, DC. Retrieved from www.mckinsey.com/Insights/MGI/Research/Productivity_Competitiveness_and_Growth/Growth_and_competitiveness_in_US

³⁸ United Nations, Department of Economic and Social Affairs. (2011). *World population prospects: The 2010 revision*. New York, NY. Retrieved from <http://esa.un.org/unpd/wpp/>

³⁹ International Monetary Fund. (2012). *World economic outlook database*. Washington, DC. Retrieved from www.imf.org/external/pubs/ft/weo/2011/02/weodata/index.aspx

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Statement of U.S. Chamber of Commerce



100 Years Standing Up for American Enterprise
U.S. CHAMBER OF COMMERCE

Statement of the U.S. Chamber of Commerce

ON: President Obama's Trade Policy Agenda and the Future of U.S. Trade Negotiations

TO: Committee on Ways and Means
1100 Longworth House Office Building

BY: U.S. Chamber of Commerce

DATE: Wednesday, February 29, 2012, beginning at 10:00 A.M.

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business manufacturing, retailing, services, construction, wholesaling, and finance — is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 115 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

The U.S. Chamber of Commerce is pleased to submit this testimony for the record on the U.S. trade policy agenda and the future of U.S. trade negotiations. The U.S. Chamber is the world's largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

No priority facing our nation is more important than putting Americans back to work. Fully 8.3% of the U.S. workforce is unemployed — a figure that soars to 15% when those who have stopped looking for jobs and the millions of part-time workers who want to work full time are included. As a nation, the biggest policy challenge we face is to create the 20 million jobs needed in this decade to replace the jobs lost in the current recession and to meet the needs of America's growing workforce.

World trade will play a vital role in reaching this job-creation goal. When President Barack Obama delivered his State of the Union address in January 2010, the U.S. Chamber and the rest of the business community welcomed his call for a national goal to double U.S. exports within five years.

The rationale is clear: Outside our borders are markets that represent 80% of the world's purchasing power, 92% of its economic growth, and 95% of its consumers. The resulting opportunities are immense.

Already, more than 38 million Americans jobs depend on trade. One in three manufacturing jobs depends on exports, and one in three acres on American farms is planted for hungry consumers overseas.

Nor is trade important only to big companies. Often overlooked in the U.S. trade debate is the fact that more than 97% of the quarter million U.S. companies that export are small and medium-sized enterprises (SMEs), and they account for nearly a third of U.S. merchandise exports, according to the U.S. Department of Commerce. In fact, the number of SMEs that export has more than doubled over the past 15 years.

The bottom line is simple: If America fails to look abroad, our workers and businesses will miss out on huge opportunities. Our standard of living and our standing in the world will suffer. With so many Americans out of work, opening markets abroad to the products of American workers, farmers, and companies is a higher priority than ever before.

A Bold New Trade Agenda

In October 2011, Washington sent a message to the world: American trade policy is back in business. Congress approved trade agreements with South Korea, Colombia, and Panama with the support of large, bipartisan majorities just nine days after receiving implementing bills from the White House.

These votes show that America can still lead on trade. Given the broad consensus that exports must play a central role in creating American jobs and boosting economic growth, we must capitalize on this momentum. In the Chamber's view, it's time to think big. It's time to commit to an aggressive new international trade and investment agenda.

The U.S. Chamber of Commerce has solicited input from its membership on new ideas for the American trade and investment agenda. Our members — including small, medium-sized, and large companies in every sector of manufacturing, services, and agriculture — replied that the United States should pursue new agreements that can deliver significant commercial benefits.

In addition, our members replied that we should look for opportunities to create new trade rules to keep up with today's rapidly changing global economy. That means we need our agreements to address such challenges as regulatory barriers to trade and tap the potential of the digital economy. We need to look beyond tariffs to trade in services and the flow of investment across borders, and we should strengthen the multilateral rules-based trading system.

The 2012 Agenda: PNTR for Russia

While much of this testimony focuses on a long-term international trade and investment agenda, we begin with the Chamber's top trade priorities before the Congress this year: Approval of Permanent Normal Trade Relations (PNTR) for Russia and reauthorization of the Export-Import Bank of the United States.

On December 16, 2011, trade ministers at the 8th WTO Ministerial Conference celebrated the conclusion of 18 years of negotiations for Russia to accede to the WTO and invited Russia to become the organization's 154th member. In those negotiations, Russia committed to enact a host of reforms to meet its extensive commitments to the WTO, and Moscow is expected to complete this work and formally join the WTO in July 2012.

That Russia will join the WTO is no longer in doubt. In fact, at this juncture, the United States can neither help nor hinder Russia in doing so. However, the U.S. Congress must act to ensure that the United States benefits from the reforms Russia is undertaking as it joins the WTO. Specifically, Congress must pass a short and simple bill that grants Russia Permanent Normal Trade Relations and repeals the Jackson-Vanik amendment with respect to Russia (see details below). Failure to do so will put U.S. workers, farmers, and businesses at a unique disadvantage in the growing Russian marketplace and drive new sales, exports, and job-creation opportunities to our European and Asian competitors.

The far-reaching multilateral trade agreement governing Russia's accession requires Moscow to implement a host of economic reforms that will open the Russian market to U.S. goods, services, and investment; ensure greater respect for the rule of law; and protect intellectual property. Among the commitments made by Russia as a condition of its accession to the WTO are the following:

- Russia will cut tariffs on manufactured goods from an average of 10% to 7%, with steeper cuts on priority goods, including:
 - Eliminating duties on information technology products;
 - Cutting duties on wide body aircraft from as high as 20% to 7.5%;
 - Slashing the average tariff on chemicals to 5.3% from as high as 20%; and
 - Cutting tariffs on combine harvesters from 15% to 5%.
- Russia will reduce duties on farm products to 10.8% from 13%, with notable gains for key U.S. products, including:

- Expanding market access for beef, poultry, and other products on a duty-free or reduced-duty basis;
- Requiring use of international standards and enforceable disciplines against trade restrictions that are not science-based; and
- Capping farm subsidies at \$9 billion in 2012 and cutting them in half by 2018.
- Russia will open its services markets to U.S. firms. Among other measures, Moscow will allow 100% U.S. ownership of companies in banking, securities, nonlife insurance, telecommunications, audiovisual, wholesale, distribution, retail, and franchises.
- Russia will for the first time be bound by the intellectual property commitments of the WTO TRIPS Agreement. Russia's accession package includes strong commitments relating to enforcement on the Internet and new copyright and patent protections.
- Russia will cut its maximum customs clearance fee by two-thirds to about \$1000.
- Russia's accession will allow recourse to the WTO dispute settlement system for trade disputes.

PNTR's Benefits Go to the U.S.

One little understood aspect of this process is that Congress does not vote on Russia's accession to the WTO and has no authority to block it. Rather, Congress must approve PNTR and repeal the Jackson-Vanik amendment with respect to Russia if American companies, workers, and farmers are to benefit from Russia's new openness as it joins the WTO.

Under WTO rules, every WTO member must grant all other members unconditional Permanent Normal Trade Relations (also known as "most-favored nation" status). This obligation originated in the WTO's predecessor, the 1947 General Agreement on Tariffs and Trade, and it mandates that any advantage granted to one WTO member by another member must be accorded unconditionally to all other members. The United States will be in clear violation of this rule if it fails to repeal Jackson-Vanik with regard to Russia. Russia would thus be fully within its rights to withhold the benefits of its accession-related reforms from U.S. companies.

The Jackson-Vanik amendment to the Trade Act of 1974 was devised to press the Soviet Union to allow the emigration of Soviet Jews, prisoners of conscience, and victims of religious persecution. With respect to Russia, Jackson-Vanik has fully accomplished its objective. With the collapse of the Soviet Union two decades ago, Russia established freedom of emigration for all citizens. Since 1992, U.S. presidents of both parties have issued annual certifications of Russia's full compliance with the Jackson-Vanik amendment.

Because no other WTO member has a law similar to Jackson-Vanik, all of Russia's trading partners except the United States will immediately benefit when Russia joins the WTO in July. If Jackson-Vanik remains applicable to Russia, the United States will be in violation of WTO rules. Failure to approve PNTR and repeal Jackson-Vanik with regard to Russia would allow Moscow the right to discriminate against U.S. companies and the workers they employ and deny them the full benefits of Russia's market-opening reforms. Meanwhile, European and Asian companies will be able to build on their already significant head start in tapping the growing Russian market.

Russia is the world's 11th largest economy and the last major economy to join the WTO. The President's Export Council estimates that U.S. exports of goods and services to Russia — which, according to estimates, topped \$10 billion in 2011 — could double or triple once Russia joins the WTO. Many U.S. companies are already active in Russia; to illustrate, the American Chamber of Commerce in Russia has more than 700 members. For many of these companies, Russia has proven to be a lucrative market for high quality goods and services.

Business opportunities in Russia are significant and are expected to grow substantially after Russia finalizes its accession to the WTO. The World Bank forecasts WTO accession could increase Russian GDP by 3.3% in the medium term and by 11% over a longer period as greater openness and competition in the marketplace compel the Russian economy to become more efficient. Russia's economy has been dominated by natural resource extraction and state-owned and state-influenced enterprises; joining the global rules-based trading system will foster diversification and openness and directly benefit consumers.

One often-posed question is: What happens if Russia fails to meet its commitments? In the area of intellectual property protection, for example, Russia continues to present significant challenges to U.S. innovators and creative artists. The Chamber will continue to urge the U.S. government to remain vigilant in ensuring that Russia implements its intellectual property commitments in full and makes greater progress with respect to combating online piracy.

However, addressing these challenges will be easier once Russia joins the WTO. Other countries will for the first time be able to use the WTO dispute settlement process to hold the Russian authorities accountable should they fail to fulfill their commitments as a new member of the organization. The WTO dispute settlement process affords graduated responses to the arbitrary imposition of trade barriers, including the possibility of WTO-sanctioned retaliation. At present, no such recourse exists, and U.S. authorities have few options to respond to Moscow's arbitrary trade actions. However, the United States cannot avail itself of WTO dispute settlement unless it grants Russia PNTR.

Russia's accession to the WTO has been a bipartisan American foreign policy goal for many years. In 1993, Russia applied to join the General Agreement on Tariffs and Trade (GATT), the precursor to the WTO. After years of talks, the Bush Administration took a big step forward in 2006 when it signed a bilateral agreement with Russia to address particular trade concerns. (Any WTO member may insist that an acceding nation negotiate such an agreement as a condition for accession.) The Obama Administration concluded the multilateral negotiations for Russia's accession in December 2011.

The longstanding bipartisan goal of bringing Russia into the global rules-based trading system is finally within reach. The only question now is whether U.S. companies, workers, and farmers will be able to secure the benefits of Russia's accession to the WTO. The answer rests with the Congress, which must approve PNTR and repeal Jackson-Vanik with respect to Russia.

The 2012 Agenda: Reauthorize the Ex-Im Bank

In addition, the Chamber strongly urges that Congress approve a four-year reauthorization for the Export-Import Bank of the United States (Ex-Im) that also sufficiently increases its lending cap. Ex-Im's temporary reauthorization will expire on May 31, and failure

to reauthorize its operations at an internationally competitive level would seriously disadvantage U.S. companies—small and large—in foreign markets, costing thousands of U.S. jobs.

Ex-Im has a proven record of success. Far from being a burden on the taxpayer, Ex-Im turns a profit for the American taxpayer. Since 2005, Ex-Im has returned more than \$3.4 billion to the Treasury above all costs and loss reserves, including \$700 million in FY 2011 alone.

Nor does Ex-Im only help big business. In fact, small businesses account for 87% of Ex-Im's transactions; further, these small business transaction figures are in addition to the tens of thousands of small and medium-sized businesses that supply goods and services to large exporters. In FY 2011, Ex-Im provided more than \$6 billion in financing and insurance for U.S. small businesses — an increase of nearly 90% since FY 2008. Ex-Im has set the goal of adding 5,000 new small businesses to its portfolio by 2015.

Another myth holds that Ex-Im competes unfairly with private financial institutions. In fact, Ex-Im covers critical gaps in financing for U.S. exports to developing countries where commercial-bank financing is unavailable or insufficient. Ex-Im also acted to fill the void when the availability of private-sector trade finance fell by 40% during the 2008-2009 financial crisis. In the aircraft sector, a new multilateral agreement doubled the fees for export credit financing, thereby addressing the concern that some export credit financing was below market rates.

Ex-Im lending exposes the taxpayer to very little risk. Borrowers have defaulted on less than 2% of all loans backed by Ex-Im since its inception in 1934, a default rate lower than commercial banks. Ex-Im loans and guarantees present very low risks because they are backed by the collateral of real goods for which a buyer has already been found and a price has been agreed. As a result, Ex-Im poses none of the risks to taxpayers that, for instance, government-sponsored enterprises in the housing sector ultimately did.

Failure to reauthorize Ex-Im would amount to unilateral disarmament in the face of other nations' aggressive trade finance programs. For example, the export credit agency in Canada has extended three times as much export financing as Ex-Im; Japan more than five times; and China an estimated eleven times. Failure to reauthorize Ex-Im will put billions of dollars in U.S. exports and thousands of American jobs at risk.

With economic growth and job creation the top priorities for the United States, Ex-Im has an important role to play. In FY 2011, Ex-Im supported export sales that created or sustained approximately 290,000 U.S. jobs at over 3,600 companies. With unemployment still high, the time is now to renew Ex-Im so these jobs are not put at risk.

In addition, the Chamber supports the immediate enactment of a package of U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) technical fixes approved by the CAFTA-DR trade ministers more than a year ago. Equally important is an extension to the African Growth and Opportunity Act (AGOA) third-country fabric provision, which accounts for nearly all U.S. apparel imports under the AGOA. Continued inaction on these measures — especially since there appears to be widespread support for their passage — creates uncertainty that dampens trade and deters investment. Finally, as with Russia, Congress should approve the long-pending bill extending PNTR to Moldova.

Trade Promotion Authority

Looking beyond these immediate priorities, a pro-jobs trade agenda must include more market-opening agreements such as those recently approved with South Korea, Colombia, and Panama. But first, the president needs the authority to negotiate such agreements — Trade Promotion Authority (TPA). Congress has granted every president since FDR the authority to negotiate market-opening trade agreements in consultation with Congress.

The U.S. Constitution gives the Congress authority to regulate international commerce, but it gives the president authority to negotiate with foreign governments. TPA permits the executive branch to negotiate agreements in consultation with the Congress; when an agreement is reached, Congress may approve or reject it, but not amend it.

TPA lapsed in 2007. That's unacceptable; every American president needs TPA, and every president should have it. Potential partners won't negotiate seriously if they know agreements could be picked apart by Congress.

Without TPA, the United States is relegated to the sidelines as other nations negotiate trade agreements without us — putting American workers, farmers, and companies at a competitive disadvantage. Already, more than 300 free trade agreements are in force around the globe, but the United States is a party to just 14 such agreements covering 20 countries. And that includes the most recent three, which have yet to be implemented.

The last time Congress passed TPA, in 2002, it took more than a year for a bill to reach the president's desk. We need to start the ball rolling now.

Trans-Pacific Partnership

With whom should the United States negotiate? The Trans-Pacific Partnership (TPP) is the one trade agreement under negotiation today in which the United States actually has a seat at the table.

It's a great place to start. Asia accounts for half of the world's population and is projected to account for a large share of its economic growth for years to come. To boost U.S. exports and create jobs at home, the United States needs to improve its access to Asian markets.

The United States is behind the eight ball in Asia. The U.S. share of Asia's international trade has actually declined by 9% since 1990 as Asian nations have negotiated preferential trading agreements among themselves. The proliferation of bilateral and regional trade accords globally is particularly intense in Asia. Intra-Asian trade now accounts for half of the region's total international commerce — up from just a quarter in 1985.

As Asian production chains have expanded to meet booming regional demand, U.S. suppliers of intermediate goods are being left behind. Many U.S. manufacturers and farmers are being displaced by local competitors or firms based in the EU or Australia, which are forging their own preferential trade deals across the region.

In short, Asian nations are designing a new architecture for trade in the global economy's most dynamic region — threatening to draw “a line down the middle of the Pacific.” The TPP is our chance to ensure the United States is in the game in Asia. Embracing nine countries today, many hope additional countries will accede over time.

Working closely with the Office of the U.S. Trade Representative, the Chamber is leading the business community's efforts to create new discipline relating to regulatory coherence, competition policy, and state-owned enterprises. In some of these cases, new rules are being framed with a view toward possibly extending them one day to other nations.

Transatlantic Economic and Trade Pact

As we consider new trade accords with our biggest commercial partners, Europe calls out for attention. Indeed, the European Union is by far America's largest international economic partner and, in the size of its economy, our only true economic peer.

Further, while polls suggest many Americans have an ambivalent attitude toward trade agreements, a recent Pew poll found that Americans support increased trade with Europe by a healthy 58% to 28% margin.

Last year, the Chamber supported a study to gauge the potential benefits of eliminating tariffs between the United States and the European Union. While European and U.S. tariffs are often low, the sheer volume of transatlantic commerce is so large that one-third of all tariffs on U.S. exports to the world are paid to the EU. The study found that eliminating transatlantic tariffs would boost U.S.-EU trade by more than \$120 billion within five years. It would also generate GDP gains of \$180 billion — a budget-neutral boost to the U.S. and EU economies.

Today, the Chamber is broadening its proposal for a Transatlantic Economic and Trade Pact that eliminates tariffs, ensures compatible regulatory regimes, and addresses investment, services, and procurement.

The global context is important as well. The EU has a free trade agreement with Mexico and is negotiating one with Canada. Does it make sense for tariffs and other trade barriers to remain in force on the third and largest leg of European-North American trade?

The Multilateral Agenda

The U.S. business community remains committed to the World Trade Organization (WTO) and the global rules-based trading system. However, the WTO's Doha Round has stalled, and it's unclear any “early harvest” or limited agreement can be reached. Negotiators can't let this impasse linger forever. The United States and other parties need to choose one of three courses: find a way to conclude the Round; find a way to agree on some limited set of deliverables, harvesting, for instance, the promising results of the trade facilitation negotiations; or abandon the negotiations once and for all.

At some point, even the third of these bad options is preferable to the ongoing impasse because it would allow WTO members to set a new agenda for the organization. The WTO is too important to leave it tied up in knots. Even if it can't resolve the 20th century issues on display in

the Doha Round, it needs to play a role in the 21st century challenges to the global rules-based trading system.

What else should the WTO do? Interest is growing in the idea of an agreement among a “coalition of the willing” that would liberalize trade in services under the WTO. Such an agreement would go beyond what was achieved in the 1995 General Agreement on Trade in Services (GATS).

A focus on services is a natural for the United States. America is by far the world’s largest exporter of services, which topped \$600 billion dollars last year. The United States is home to large numbers of world beating services firms in such sectors as audiovisual, banking, energy services, express delivery, information technology, insurance, and telecommunications.

U.S. services companies have seen regulatory barriers multiply in ways that could not be foreseen when the GATS was negotiated nearly two decades ago. New challenges include cyber security, movement and storage of data, the free flow of commercial information on the Internet, privacy, and supply chain challenges that go beyond familiar customs clearance matters.

Negotiating a services agreement would present opportunities to address the opportunities and challenges of the digital economy and the spread of global supply chains. Doing so at the WTO would strengthen the global rules-based trading system, which some believe has been weakened by the long impasse in the Doha Round.

This approach would also present powerful incentives for countries to join in. Benefits would be extended only to those countries that sign up, and there is ample precedent for “plurilateral” agreements among a set of path-breaking countries expanding over time to cover all or a vast majority of world trade in the sectors addressed.

The United States should consider working with like-minded countries to pursue additional sectoral agreements that have broad appeal across the WTO membership in such areas as trade facilitation and environmental goods and services.

New Partners for FTAs

In addition to these regional and multilateral proposals, the business community is keen to see new free trade agreements (FTAs) negotiated bilaterally as well. As mentioned above, the U.S. Chamber believes we should pursue new trade deals that can deliver significant commercial benefits. Also, we should look for opportunities to create new trade rules to keep up with today’s rapidly changing global economy.

Given their economic potential, Brazil, Egypt, India, and Indonesia are all countries named by Chamber members as interesting potential FTA partners. However, in each case a great deal of work would need to be undertaken before negotiations could begin. For instance, Brazil’s leaders have not given a clear signal of interest in launching negotiations with the United States, though Brazilian officials have done so in the past.

With regard to Egypt, the Chamber-based U.S.-Egypt Business Council recently worked with the Center for Strategic and International Studies on a study assessing the potential benefits

of a U.S.-Egypt FTA and presenting recommendations for steps to take that could pave the way for the launch of negotiations.

In the case of India, U.S. officials are focusing — quite appropriately — on negotiations for a bilateral investment treaty. Similarly, the recently launched U.S.-Indonesia Commercial Dialogue may afford opportunities to assess Indonesia's preparedness to negotiate a trade agreement (though the optimal path forward would be for Indonesia to join the TPP).

In addition, Chamber members have called attention to the strong growth prospects of many countries in Africa, where the United States lacks a developed network of trade agreements comparable to those in, for instance, the Americas. The United States should dedicate greater resources and attention to ensure U.S. firms can get in on the ground floor of Africa's economic development.

International Investment

In addition, it's clear that the United States must dedicate more attention to seizing the benefits of international investment. International investment is a two-way street, with benefits flowing from both foreign investment in the United States and U.S. investment abroad.

Foreign companies employ more than 5.3 million Americans and support an annual payroll of more than \$400 billion, according to the U.S. Department of Commerce. These foreign-headquartered companies purchase more than \$1.8 trillion in inputs from local suppliers and small businesses and account for more than one-fifth of all U.S. merchandise exports.

However, U.S. firms' investments abroad also bring real benefits to Americans, including on the jobs front. Studies have found that U.S. companies that invest abroad tend to create more jobs in the United States and pay higher wages than companies focused solely on the domestic market. Indeed, the U.S. Department of Commerce reports that U.S. multinational corporations added 675,000 U.S. jobs between 2007 and 2009 — a period in which the U.S. economy shed more than eight million jobs (see graph on next page).

U.S. multinationals have continued to concentrate their high-wage, high-skill jobs in the United States, according to the same report. The roughly \$6 trillion in annual revenue U.S. multinationals earn through their foreign operations help fund their research and development activities, 84% of which continue to be performed in the United States.

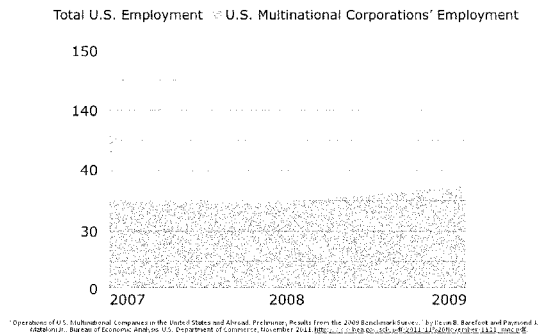
Polls show many Americans believe “offshoring” is a major driver of job loss, but the facts show the movement of jobs to foreign locations accounts for a tiny fraction of layoffs. For example, the Bureau of Labor Statistics reported the separation of 184,493 workers from their jobs in the third quarter of 2011 in “mass layoffs” (i.e., layoffs of 50 or more workers). However, only 110 of these layoffs resulted from movement of work to an overseas location — or 0.0006% of the total.

Some charge that international investment is really about substituting foreign production for domestic production and thus replacing U.S. workers with low-wage foreign labor. In fact, just 8.9% of the production of foreign affiliates of U.S. multinationals is sold in the U.S. market,

according to data compiled by the U.S. Department of Commerce. In other words, 92% of their production is sold abroad.

Job Losses and U.S. Multinational Corporations

*As the broader economy shed eight million jobs in 2007-2009,
U.S. multinational corporations actually created 675,000 new American jobs*



To remain a leader in the global economy, the United States must lead on both sides of the investment equation. That means the United States needs to update its approach to protecting U.S. investments abroad to reflect the changing global economy. We need to guarantee better market access and treatment for U.S. investors abroad, stem the growth of restrictive and controlling performance requirements that seek to impose controls over investments, and level the playing field for U.S. investors competing with state-owned commercial actors.

We need to negotiate more investment protecting agreements. The U.S. ranks 44th in the world in the number of bilateral investment treaties (BITs) it has in place; by contrast, Germany and China have 133 and 121 such treaties, respectively. Negotiations with key countries such as China and India have stalled while organized labor and environmental groups lobby the administration to load up investment agreements with labor and environmental provisions. These efforts are ultimately aimed at undermining ongoing and future negotiations, if not the entire BIT program.

Given America's need to create jobs, rebuild our infrastructure, and remain the world's pre-eminent innovation hub, we have no choice but to actively court in-bound investment with a welcoming policy environment. American companies seeking to be global players must have the unwavering support of the U.S. government behind them in promoting and protecting their investments abroad. Going forward, the needs of international investment, outbound and inbound, demand greater policy attention from the Administration and the Congress.

* * *

For the Chamber, the agenda is clear. The United States cannot afford to sit on the sidelines while others design a new architecture for the world economy and world trade. The United States needs a laser-like focus on access to foreign markets. In the short term, this means approving PNTR for Russia and reauthorizing the Ex-Im Bank. It also means renewing the president's Trade Promotion Authority to allow the negotiation of additional multilateral, regional, and bilateral trade agreements. The U.S. Chamber of Commerce looks forward to working with the members of the Committee to advance a bold trade agenda to generate growth, opportunity, and jobs.



Statement of American Apparel & Footwear Association



we wear™ jobs

Written Testimony
Submitted by the
American Apparel & Footwear Association (AAFA)

Before the
House Ways & Means Committee
On
President Obama's Trade Policy Agenda and
The Future of U.S. Trade Negotiations

February 29, 2012

Thank you for providing us this opportunity to provide written testimony for today's hearing titled "President Obama's Trade Policy Agenda and The Future of U.S. Trade Negotiations". We believe that, if done correctly, U.S. trade policy holds immense potential to grow the U.S. apparel and footwear industry, create U.S. jobs, help hardworking American families, and support the U.S. economy.

Imports are Good for American Workers, American Families, and American Businesses
The American Apparel & Footwear Association (AAFA) is the national trade association representing the apparel and footwear industries, and their suppliers. Our members produce and market sewn products throughout the United States and the world. In short, our members make everywhere and sell everywhere.

And despite many rumors of our demise, the U.S. apparel and footwear industry today is still a major industry, employing millions of people in the United States.

The basic premise is this: When we wear clothing and footwear, we wear more than the garments and shoes themselves. We wear the innovation and intellectual property that make the shoes and clothes better. We wear the socially responsible and sustainable supply chains and the product safety systems that make the clothes and shoes safer and more responsible. And we wear the U.S. jobs involved in creating and delivering an ever wider variety of clothes and shoes to hardworking American families at lower prices.

And when we talk of jobs in the 21st century U.S. apparel and footwear industry, we are talking about 4 million U.S. workers. These are the Americans - seen and unseen - who design shoes and clothes, perform R&D, cut and sew, oversee production, handle customs and logistics, ensure compliance, market and merchandise product, and work on the sales floor. And these numbers don't even include the thousands of jobs of U.S. workers in transportation, distribution, warehousing, and logistics who support our industry.

With 98 percent import penetration in apparel and 99 percent import penetration in footwear, these 4 million U.S. workers are almost entirely dependent upon U.S. imports.

In fact, about 75 percent of the retail value of most clothing and footwear comes from pre- and post-production activities in the United States. So when we wear our clothing and shoes, we wear the realization that imports create jobs in the United States in addition to creating consumer choice and affordable style.

And these jobs are high-valued added jobs. The average hourly earnings for a worker in a U.S. apparel factory is \$11.96/hour, while the average hourly earnings for a worker in a U.S. apparel or footwear brand (U.S. wholesale apparel and piece good trade) is \$25.35/hour and the average hourly earnings for a worker in the retail side of the apparel

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and footwear business is \$14.50/hour. Likewise, the average hourly earnings for a worker in transportation and logistics, a key link in the apparel and footwear supply chain, is \$21.65/hour.

We wear also the knowledge that this industry -- often described as a "sunset" industry by those who only view an industry's value through its U.S. manufacturing footprint -- is the largest consumer products industry in the United States. With annual sales of \$340 billion, we outstrip many other "big" industries, including the \$17 billion spent on bottled water, the \$22 billion spent on video games, the \$75 billion spent on fast food, the \$127 billion spent on soda, the \$175 billion spent on new cars, and the \$277 billion spent on alcoholic beverages.

And while we are proud of our domestic manufacturers and the jobs they support, many of which equip our servicemen and servicewomen with the uniforms and boots to protect them in the field, we are also proud of the many other high value, well-paying U.S. jobs our members provide.

As such, we believe that the U.S. trade policy agenda and future U.S. trade negotiations must reflect the reality that imports, and trade overall, are good for American families, American workers, American businesses, and the American economy.

U.S. trade policy must be fundamentally realigned to incorporate this reality, including:

1) Realigning Trade Policy to Help U.S. Workers, U.S. Families, & U.S. Businesses

As previously noted, 99% of all shoes and 98% of all clothing sold in the United States today is imported. Yet, the United States still continues to charge duties on U.S. imports of footwear and apparel, much of which has not been manufactured in the United States for decades, if ever. And these import duties are high. While duties on all U.S. imports average a low 1.5%, duties on U.S. imports of footwear average 11% and duties on U.S. imports of apparel average 13%.

These duties aren't paid by the foreign country or the foreign exporter. They are paid by the U.S. company, who must incorporate that import duty into the price they charge U.S. consumers. And these duties are regressive, with the highest duties on apparel and footwear, with some as high as 67.5%, falling on the lowest-cost clothes and shoes. What's worse is that these import duties act as a hidden tax on hardworking American families, with most not knowing that 10, 20, 30% of the price they pay at the cash register for one of life's necessities is because of import duties.

These high import duties, which protect no one, also serve as a disincentive to U.S. companies to invest in new technologies and new products. Not only do the import duties raise the price of shoes and clothes, meaning that U.S. companies sell less, but the high import duties can price the most technologically-advanced clothing and shoes out of the market altogether.

Thankfully, a fast-growing number of progressively-minded members of Congress are introducing and championing legislation that recognizes that these import duties protect no one and only serve to hurt hardworking American families, American workers, and American businesses.

As such, we urge the Committee to support these efforts by quickly considering and approving the following legislation:

- [Affordable Footwear Act \(H.R. 2697\)](#) -- This bi-partisan, commonsense legislation temporarily eliminates the import duties on low-cost footwear, children's shoes, and other types of high-dutied footwear no longer made in the United States, or about 1/3 all of footwear import duties.
- [U.S. OUTDOOR Act \(H.R. 2071\)](#) -- This bi-partisan legislation would temporarily eliminate the import duties on certain types of "recreational performance outerwear." This outerwear has never been made in the United States and represents the most technologically-advanced outerwear on the market today.

We also urge the Committee to immediately re-start the [Miscellaneous Tariff Bill \(MTB\)](#) process as well as quickly approve legislation that would renew the hundreds of MTB provisions expiring at the end of this year. The MTB process is a non-controversial and bi-partisan process that allows for the temporary elimination of import duties on products no longer manufactured in the United States, like many types of footwear and apparel. Just as important, the MTB process recognizes the reality of today's global supply

chains by creating a mechanism to allow for the import, duty-free, of critical inputs no longer made in the United States that are used in U.S. manufacturing, including U.S. footwear, apparel, and textile manufacturing.

2) Realigning U.S. Trade Policy to Help the Countries that Need it Most While Also Helping U.S. Workers, U.S. Businesses and U.S. Families

U.S. trade policy can be a powerful tool, not only to help U.S. workers, U.S. consumers, and U.S. businesses, but also to help the world's poorest countries rise out of poverty. Not only is helping the poorest countries rise out poverty the right thing to do, and a core American value, but it also serves America's interests on four other fronts: 1) creating new markets for U.S. products, U.S. agriculture, and U.S. services; 2) promoting America's security; 3) lowering the costs of products for hardworking American families, and 4) helping U.S. companies better compete in the global economy.

At the same, it has been proven time and again over the last two centuries that apparel and footwear are the first stepping stones towards industrialization and building a viable economy. Not only is this truth woven into the fabric of American history, this story has played out more recently in Taiwan, Korea, Costa Rica, India, Indonesia, and now China.

Yet, Congress' key trade policy tool to promote development, the Generalized System of Preferences (GSP) program, statutorily excludes apparel, footwear, and related fashion products like travel goods from receiving any benefits. Starting with the African Growth & Opportunity Act (AGOA) and the Andean Trade Promotion & Drug Eradication Act (ATPDEA) a decade ago and most recently with the Haiti HOPE/HELP Acts, however, Congress has begun recognize the key role the apparel and footwear industries can play in development.

As such, we urge the Committee to quickly consider and approve the SAVE Act (H.R. 2387), bi-partisan, commonsense legislation that would allow duty-free access to the U.S. market for apparel from the Philippines, a key U.S. ally and former U.S. colony, as long as the apparel, for the most part, is assembled with U.S.-made fabrics.

Further, we urge the Committee to tackle overall trade preference reform to ensure that the world's poorest countries obtain real and meaningful access to the U.S. market for the products they are most likely to produce – apparel and footwear – for all of the reasons outlined previously. A good first step for the Committee would be to quickly consider and approve legislation similar to the Asia-South Pacific Trade Preferences Act (S. 1443).

3) Realigning FTA Negotiations to Reflect Today's Global Economy

We applaud the Obama administration for embarking on an ambitious effort to conclude negotiations towards a 21st century Trans-Pacific Partnership (TPP) Free Trade Agreement. We believe, however, that President Obama is missing two key ingredients that are necessary for making these efforts a success.

First, the Committee must quickly consider and approve Trade Promotion Authority (TPA). TPA enables the Obama administration to negotiate in good faith with our TPP partners. More importantly, TPA makes clear not only to the Obama administration, but to our TPP partners the priorities of the United States in negotiating a commercially-meaningful, 21st century TPP agreement.

Second, we urge the Obama administration to recognize and we urge the Committee to make clear that the successful conclusion of negotiations towards a 21st century TPP agreement requires the United States to abandon policies that clearly don't help U.S. workers, U.S. companies, or U.S. families, policies that clearly don't work in today's global economy.

The U.S. government's continued pursuit of 20th century "yarn-forward"-style rules for apparel and textiles in the TPP is one such failed policy that must be abandoned immediately. Almost two decades of U.S. trade policy have proven that "yarn-forward" rules have failed to promote trade. Despite the proliferation of U.S. free trade agreements over the last two decades that have embraced the "yarn-forward" rules for apparel, the percentage of U.S. apparel imports from our FTA partners continues to fall

precipitously, from 40.3% of total U.S. apparel imports in 2001 to a record low of 17.2% in 2011. The “benefits” of “yarn-forward” have failed to materialize on the export side either. For example, U.S. textile exports to the four TPP partner countries with whom the United States already has FTAs – Australia, Chile, Peru, and Singapore – actually fell slightly (-0.1%) between 1999 (shortly before the FTAs were implemented) and 2011. The bottom line is that antiquated “yarn-forward” rules don’t reflect the realities of today’s global economy, where apparel is made everywhere and sold everywhere, using textiles and other inputs made anywhere.

Meanwhile, claims that U.S. textile manufacturers can only compete in a lopsided playing field in FTAs when given the “protections” of a “yarn-forward” rule just don’t live up to the numbers. While U.S. textile exports to the four TPP FTA countries fell slightly between 1999 and 2011, U.S. textile exports to another country with whom we don’t have an FTA or “yarn-forward” rules – China – surged 658.7%, more than sextupling in just over a decade. And this isn’t just small potatoes. U.S. textile manufacturers exported over \$1.1 billion worth of yarns and fabrics to China in 2011, making China the 2nd largest market for U.S. yarn and the 3rd largest market for U.S. fabric.

“Yarn-forward” rules don’t help U.S. manufacturers. To the contrary, such restrictive rules hurt U.S. manufacturers. As with many great U.S. industries, the China numbers also show that U.S. textile manufacturers can not only survive, but thrive when given a level playing field. Imagine what duty-free access to these markets could do to boost U.S. textile exports to new heights.

Just as important, dogged pursuit of 20th century “yarn-forward” rules in the TPP not only hurts the U.S. apparel industry and the millions of U.S. workers the industry employs, it also severely impairs the ability of the United States to reach the many goals it hopes to achieve in the negotiations.

Over 60% of the duties our current TPP partners pay on their exports to the United States are on apparel. For TPP partner Vietnam, that number exceeds 80%.

As such, negotiations over the apparel provisions cannot be done in a vacuum. Decisions over granting meaningful access to the U.S. apparel market will directly impact the ability of the United States to secure meaningful market access in the TPP countries for U.S. agriculture, U.S. manufacturing, and U.S. services, as well as securing robust provisions on the Internet, State-Owned Enterprises (SOEs), labor rights, the environment, intellectual property rights (IPR), and investment.

Despite this fact, the U.S. government continues to attempt to negotiate the apparel provisions of the TPP in a vacuum. The Obama administration must recognize and the Committee must make clear that the continuation of this policy will serve no one’s interest. Such a policy will not only harm the millions of U.S. workers in the apparel industry, but also the countless millions of farmers and workers employed in U.S. agriculture, U.S. manufacturing, and U.S. services.

4) Realigning U.S. Trade Policy to Create a Predictable Business Environment

Congress has long used trade policy in a concerted effort to make U.S. farmers, U.S. manufacturers, and U.S. businesses more competitive in the global economy. Yet many of those efforts have fallen far short of expectations. The lofty goals behind such programs as the African Growth and Opportunity Act (AGOA), the Miscellaneous Tariff Bill (MTB), the cotton and wool trust funds, the Andean Trade Promotion & Drug Eradication Act (ATPDEA) as well as behind key provisions in U.S. FTAs like the U.S./Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) have not been realized.

These programs and provisions have fallen short of expectation not because the core concepts underpinning the programs were wrong, but because either 1) they included provisions legislated by Congress, or interpreted by the administration, that did not reflect economic realities or 2) key provisions have not been renewed in a timely manner. Both of these points go to the heart of what is necessary for a successful U.S. trade policy – a predictable business environment.

On the first point, we would like to highlight two examples. The first is the so-called “abundant supply” mechanism in the apparel provisions under AGOA. The mechanism was based on the laudable goal of creating a vertical textile and apparel industry in Africa. However, the timeline for achieving that goal did

not reflect the realities of the global apparel industry. So, instead, of creating a vertical industry in Africa, the provision, before it was subsequently removed by Congress, only served to drive many U.S. apparel brands and retailers out of Africa, many of whom have never returned. The second is a provision created by Congress under CAFTA-DR that is intended to grow U.S. denim fabric exports to and U.S. jeans imports from the Dominican Republic. The so-called "DR 2:1" program was modeled on a similar, successful program with Nicaragua under CAFTA-DR. However, because of an overly restrictive interpretation of the rule by the U.S. government that failed to take into account the realities of the industry or the market, the program has failed miserably.

On the second point, companies in the U.S. apparel and footwear industry make sourcing or manufacturing decisions 9-12 months before any product is actually delivered. This timeline is necessary to meet the sometimes contradictory demands of just-in-time inventory and quick replenishment required in today's market. So, for example, when Congress renews the Andean Trade Promotion & Drug Eradication Act (ATPDEA) multiple times for 6 months, 8 months, 10 months, or 2 months, and then allows ATPDEA to lapse altogether only to retroactively renew the program 8 months later, it is no surprise that U.S. apparel imports from Colombia have slid 72.3% and U.S. textile exports have fallen 40.4% since 2004. Likewise, Congress allowed the cotton and wool trust funds, two successful programs designed to enable U.S. cotton shirt and wool suit manufacturers to recover the cost of the high import duties on key inputs (cotton shirting fabrics and wool) no longer made in the United States to expire in 2010. Despite desperate pleas from these U.S. manufacturers, who now have no choice but to bear the full brunt of these import duties on critical inputs, Congress has failed to renew these programs.

The U.S. apparel and footwear industry is not alone in needing such a predictable business environment. As such, AAFA urges the Committee to quickly consider and approve:

- AGOA 3rd Country Fabric Provision – This provision, which expires September 30, 2012, accounts for virtually all apparel trade under AGOA. Many apparel firms have already canceled orders for fall 2012 because of concern that Congress won't renew the provision.
- Renewal of the cotton and wool trust funds – As previously stated, these programs are critical to U.S. cotton shirt and wool suit manufacturers and the thousands of U.S. workers they employ.
- Nicaragua TPL Provision – While this provision does not expire until 2014, many U.S. apparel companies have started to suspend orders based on concerns that the provision won't be renewed by Congress.
- CAFTA-DR Fixes – These fixes, supported by the entire U.S. textile and apparel supply chain, and every CAFTA-DR partner, have been waiting for Congressional approval for over a year.

5) Realigning Customs to Better Reflect Today's Global Economy

The approximately 4 million U.S. workers employed U.S. apparel and footwear industry depend on trade. Yet, the agency tasked with managing trade flows, U.S. Customs and Border Protection (CBP), for a variety of reasons, has made that trade more difficult. The industry has embraced CBP programs to enhance security and improve commercial enforcement, participating in programs such as C-TPAT at a much higher degree than most other industries. Despite those efforts, the industry remains subject to a much higher level of scrutiny by CBP than most other industries.

We urge the Committee to quickly consider and approve customs reauthorization legislation that would 1) rebalance CBP's role between trade facilitation and security and 2) employ account management and other programs to reduce to immense burden of commercial enforcement on the industry.

We believe that U.S. trade policy and future U.S. trade negotiations can truly be a "win-win-win-win" for U.S. worker, U.S. manufacturers, U.S. consumers, and the U.S. apparel and footwear industry, but only if that trade policy recognizes and embraces the realities of today's global apparel and footwear value chains and the 4 million U.S. jobs dependent on it.

Thank you for your time and consideration in this matter.

Please contact Nate Herman at 703-797-9062 or by e-mail at nherman@wewear.org if you have any questions or would like additional information.



Statement of Center for Fiscal Equity

Comments for the Record

**U.S. House of Representatives
Committee on Ways and Means**

**Hearing on President Obama's Trade Policy Agenda
with U.S. Trade Representative Ron Kirk and
a Second Panel on the Future of U.S. Trade Negotiations**

Wednesday, February 29th, 2012, 10:00AM
1100 Longworth House Office Building

By Michael G. Bindner
Center for Fiscal Equity

Chairman Camp and Ranking Member Levin, thank you for the opportunity to submit comments for the record on this issue. We will leave it to the Administration witness to discuss their plans and will instead concentrate on how our tax reform plan impacts trade in general and trade with China in particular. These comments are similar to those submitted regarding our relationship with China last October. As you know, the Center for Fiscal Equity has a four part proposal for long term tax and health care reform. The key elements are

- a Value Added Tax (VAT) that everyone pays, except exporters,
- a VAT-like Net Business Receipts Tax (NBRT) that is paid by employers and includes the employer contribution to OASI, but, because it has offsets for providing health care, personal retirement accounts, education benefits and family support, does not show up on the receipt and is not avoidable at the border,
- an employee payroll tax to for Old Age and Survivors Insurance (OASI) and
- an income and inheritance surtax on high income individuals so that in the short term they are not paying less of a tax burden because they are more likely to save than spend -- and thus avoid the VAT and indirect payment of the NBRT.

A Value Added Tax (VAT) is suggested because of its difficulty to evade, because it can be as visible to the ultimate consumer as a retail sales tax and **because it can be zero rated at the border for exports and collected fully for imports**. As such, it is superior to proposals for a FairTax or 9% National Sales Tax. As many others, particularly Michael Graetz, have pointed out, resorting to a VAT rather than imposing trade sanctions has the effect of imposing higher costs on imports and lower costs on exports, without provoking retaliation from our trading partners -- mostly because our trading partners **already use such a regime**. By not adopting a similar tax structure, we essentially tie the hands of our exporters in the fight for international market share. There can be no retaliation when using VAT is already the international standard.

In short, if the U.S. adopted a VAT, China would have no countermove as the use of VAT is part of global trade structures.

It is also important to exercise care in delineating what is funded by a VAT. We believe that VAT funding should be confined to funding domestic discretionary military and civilian spending. Zero rating a tax supporting such spending is totally appropriate, as foreign consumers gain no benefit from these expenditures. Likewise, making imports fully taxable for this spending correctly burdens the consumers who fully benefit from these services. As importantly, making such a tax visible provides an incentive to taxpayers to demand less of such spending.

The NBRT would not be border adjustable because it is designed to pay for entitlement costs which benefit employees and their families directly, so that it is appropriate for the foreign beneficiaries of their labor to fund these costs. Additionally, the ultimate goal of enacting the NBRT is to include tax expenditures to encourage employers to fund activities now provided by the government – from subsidies for children to retiree health care to education to support for adult literacy. Allowing this tax to be zero-rated at the border removes the incentive to use these subsidies, keeping government services in business and requiring higher taxation to support the governmental infrastructure to arrange these services – like the Committee on Ways and Means.

If the NBRT is enacted in this way, the United States should seek modification to our trade agreements to require that similar expenditures not be funded with taxes that are zero rated at the border. As foreign consumers benefit from subsidies for American families, American consumers benefit from services provided to overseas workers and their families. This benefit should be recognized in international tax and trade policy and American workers should not be penalized when other nations refuse to distribute the cost of benefits to foreign workers to the American consumers who receive the benefit of these services. If our trading partners do not match this initiative, some items of spending could be shifted from NBRT funding to VAT funding, so that we are not making unilateral concessions in this area.

Separation of Old Age and Survivors Insurance Payroll taxes from the NBRT is necessary unless the employee contribution is to be totally eliminated with a uniform benefit or uniform. A separate payroll contribution is required as long as benefit levels are set according to income. If a uniform benefit is desired, then payroll taxes can be discontinued and the NBRT expanded.

Employee contributions could not be zero rated at the border. If employer contributions are equalized and contributed to a public system, however, they could be incorporated into a VAT rather than an NBRT. This allows the Social Security system to benefit from foreign labor where outsourcing has occurred. Indeed, it would be an essential expansion of the tax base if globalization is to continue unabated.

The prospect of Personal Retirement Accounts can also be considered, although doing so is like holding a lightning rod in a thunderstorm. I do agree with President Obama that such accounts should not be used for speculative investments or even for unaccountable index fund investments where fund managers ignore the interests of workers. Investing such accounts in insured employee-ownership of the workplace would have an entirely different outcome, especially if voting shares occurred on an occupational basis with union representation. **The impact at the**

international level of such employee-ownership if extended to subsidiaries and the supply chain is also potentially profound, especially in regard to transfer pricing and the international growth of the union movement.

Personal accounts invested in index funds do not have that feature, although they do serve to support American retirees who because of them have a financial interest in firms utilizing foreign labor, particularly low-wage Chinese labor. The proposed USA accounts proposed by President Clinton had the same feature, although as a supplement to the Social Security benefit rather than a partial replacement, although this feature would be muted by enactment of value added taxes. The flaw in using foreign investment to make up for lost worker revenue is that eventually foreign workers either radicalize or become consumers and demand their own union rights.

China is sitting on a time bomb, and this time bomb has nothing to do with its U.S. Treasury holdings. These holdings are secure as long as the Congress and Administration deal realistically with the expiration of the 2001/2003/2010 tax cuts at the end of next year by offsetting any cuts made permanent with spending cuts or and making sure that any tax reform raises the additional revenue required to cover the difference. Rather, their difficulties arise from their treatment of domestic migrants from rural areas working in Chinese factories. Eventually, these migrants will object to the locality system imposed upon them and demand the same level of pay, benefits and consumerism as is earned by those designated as urban. When this occurs, the valuation of the Yuan will occur, assuming that the Chinese Communist Party survives. We do not make this assumption, however.

It would be better for all concerned if American workers were already in an ownership position due to repeal of the Taft-Hartley Act prohibitions on concentrated pension fund ownership and the enactment of personal retirement accounts. If employee-owned firms extended this ownership to their overseas subsidiaries and purchased their supply chains, they could change the equality system in advance of revolution – however quick adoption of our suggestions to expand employee-ownership is probably less likely than revolution in China.

The tendency for consumerism to follow industrialization is why globalization is a poor substitute for expanding the domestic population, as the Center proposes with its expanded **Child Tax Credit, which we propose as an offset to the NBRT.**

In the long term, the explosion of the debt comes from the aging of society and the funding of their health care costs. Some thought should be given to ways to reverse a demographic imbalance that produces too few children while life expectancy of the elderly increases.

Unassisted labor markets work against population growth. Given a choice between hiring parents with children and recent college graduates, the smart decision will always be to hire the new graduates, as they will demand less money – especially in the technology area where recent training is often valued over experience.

Separating out pay for families allows society to reverse that trend, with a significant driver to that separation being **a more generous tax credit for children**. Such a credit could be “paid for” by ending the Mortgage Interest Deduction (MID) without hurting the housing sector, as housing is the biggest area of cost growth when children are added.

While lobbyists for lenders and realtors would prefer gridlock on reducing the MID, if forced to choose between transferring this deduction to families and using it for deficit reduction (as both Bowles-Simpson and Rivlin-Domenici suggest), we suspect that they would choose the former over the latter if forced to make a choice. The religious community could also see such a development as a “pro-life” vote, especially among religious liberals.

Enactment of such a credit meets both our nation’s short term needs for consumer liquidity and our long term need for population growth. Adding this issue to the pro-life agenda, at least in some quarters, makes this proposal a win for everyone.

The expansion of the Child Tax Credit is what makes tax reform worthwhile. Adding it to the employer levy rather than retaining it under personal income taxes saves families the cost of going to a tax preparer to fully take advantage of the credit and allows the credit to be distributed throughout the year with payroll. The only tax reconciliation required would be for the employer to send each beneficiary a statement of how much tax was paid, which would be shared with the government. The government would then transmit this information to each recipient family with the instruction to notify the IRS if their employer short-changes them. This also helps prevent payments to non-existent payees.

Assistance at this level, especially if matched by state governments may very well trigger another baby boom, especially since adding children will add the additional income now added by buying a bigger house. Such a baby boom is the only real long term solution to the demographic problems facing Social Security, Medicare and Medicaid, which are more demographic than fiscal. Fixing that problem in the right way definitely adds value to tax reform.

The fourth proposal is a surtax on high incomes from inheritance, wages, dividends and capital gains (essentially all income with the exception of sales to a qualified ESOP). It would fund overseas military operations, which are often debt financed, and net interest and debt repayment.

Explicitly identifying the high income surtax with net interest payments highlights the need to raise these taxes as a means of dealing with our long term indebtedness, especially in regard to debt held by other nations. While consumers have benefited from the outsourcing of American jobs, it is ultimately high income investors which have reaped the lion’s share of rewards. The loss of American jobs has led to the need for foreign borrowing to offset our trade deficit. Without the tax cuts for the wealthiest Americans, such outsourcing would not have been possible, **including the creation of Chinese industry designed to sell to Americans**. Indeed, there would have been any incentive to break unions and bargain down wages if income taxes were still at pre-1981 or pre-1964 levels. The middle class would have shared more fully in the gains from technical productivity and the artificial productivity of exploiting foreign labor would not have occurred at all. Increasing taxes will ultimately provide less of an incentive to outsource American jobs and will lead to lower interest costs overall

The final question is the repatriation of profit from overseas subsidiaries, including profits parked in China. Under a consumption tax regime, there would be no separate levy on profit. Value added taxes are already paid in the country where the product is sold and these taxes include both the contributions of labor and capital. For the purposes of businesses, profit should not be taxed again when repatriated, except to the extent that this profit results from value added in the United States. Use of VAT exemptions must not be allowed as a tax avoidance scheme. Products with parts that have been produced or developed in the United States, then sent elsewhere for assembly, must reacquire any obligation to pay that was shed at the border. Not providing for this contingency opens the door for a great deal of abuse.

The source nation of dividend income, meanwhile, must be irrelevant for purposes of collection of the proposed high income and inheritance surtax. The subject of this tax is not the income of the business, which has been shifted to the NBRT for individual filers, but the income of households for personal consumption and savings. The existence of this tax takes into account the decreased likelihood that this income will be spent and therefore taxed under NBRT and VAT regimes and to safeguard savings opportunities for the non-wealthy, who would otherwise be priced out of the market for investments by higher income individuals who, because they have greater opportunities to save, garner greater and greater shares of America's wealth. The proposed surtax is an attempt to level the playing field so that everyone can invest.

Thank you again for the opportunity to present our comments. We are always available to discuss them further with members, staff and the general public.

Contact Sheet

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Hearing on President Obama's Trade Policy Agenda with U.S. Trade Representative Ron Kirk
and a Second Panel on the Future of U.S. Trade Negotiations
Wednesday, February 29th, 2012, 10:00AM

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears:

This testimony is not submitted on behalf of any client, person or organization other than the Center itself, which is so far unfunded by any donations.



Statement of Consumer Electronics Association

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Hearing on President Obama's Trade Policy Agenda with U.S. Trade Representative Ron Kirk and Second Panel on the Future of U.S. Trade Negotiations

Feb 29, 2012

I. Background on CEA

CEA is the preeminent trade association promoting growth in the consumer electronics industry through technology policy, events, research, promotion and the fostering of business and strategic relationships. CEA represents more than 2,000 corporate members involved in the design, development, manufacturing, distribution and integration of audio, video, mobile electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services.

CEA's members account for more than \$121 billion in annual sales in the United States. This figure represents approximately 40 percent of all CE sales worldwide. The CE industry directly employs approximately 1.9 million workers in the United States. Of these, 212,000 jobs are in manufacturing; 574,000 are in retail; 38,000 are in transportation; and 1,073,000 are in parts of the U.S. economy that solely depend on the utilization of CE products, such as the motion picture and sound recording industries, telecommunications, broadcasting, and software development. Many of these jobs are on the cutting-edge of technology, including jobs related to the research and development of new technologies, as well as the marketing and design of new products. The CE sector directly generates \$1.4 trillion in output, \$325 billion in labor compensation, \$145 billion in tax payments, and 4.4 million jobs in the United States. This economic activity translates into a direct contribution of \$585 billion by the CE sector to U.S. gross domestic product ("GDP") – 4.6 percent of the entire national economy.

This robust industry picture has occurred despite the fact that CE markets around the world are not as open as they should be. The World Trade Organization ("WTO") Information Technology Agreement ("ITA"), while an important boon to the global technology industry, does not include most CE products. Consequently, many CE products are still subject to significant tariffs and non-tariff barriers around the world. The persistence of these trade barriers informs CEA's position with respect to trade negotiations. CEA views bilateral trade agreements, as one vital step in reaching the larger goal of multilateral trade liberalization.

The CE industry is a highly competitive, efficient, and globally integrated industry. These factors, coupled with the large investment needed to manufacture CE products, result in CE products often having narrow profit margins. In the absence of a multilateral agreement covering CE products, small price changes resulting from duty savings stemming from free trade agreements (FTA) can have the effect of shifting quantities of products demanded to those products produced by favored manufacturers, i.e., those trading with the benefit of an FTA. Accordingly, CEA favors global trade liberalization, which best avoids the trade distortions that may benefit some members while disadvantaging others, and ultimately could be detrimental to consumers. Lowering barriers on a reciprocal basis will have a positive effect in terms of maximizing areas in which the US CE industry has competitive edges, such as in high technology parts, research and development, design, and the launching of new products.

The last two decades have largely been defined by two trends – globalization and technological change. The CE sector, which includes companies that manufacture and distribute electronic products to consumers and that supply content and services for use with these products, has been profoundly affected by both trends. The rise of the Internet, computers, and cellular telephones has revolutionized the way people communicate, shop, learn, and live, in addition to changing the types of products that consumers purchase. While manufacturing of many consumer electronics products has moved abroad, domestic employment in industries supplying content and services for these products has risen. International trade and technological advances have improved the quality and variety of consumer electronics products available and lowered prices. Including indirect and induced effects, the industry contributes \$2.6 trillion of total output, \$836 billion of labor compensation, \$321 billion in taxes, and 15.4 million jobs. The direct, indirect and induced economic activity translates into a \$1.3 trillion contribution by the CE sector to U.S. GDP – 10.4 percent of the entire national economy. Trade is an important component of U.S. economic activity in the CE sector, and exports remain the largest element of trade's contribution. Exports of goods and services account for 10 percent of total CE sector output. This translates into approximately 1.5 million U.S. jobs reliant on CE exports and 2.4 million jobs reliant on trade overall. Tax payments of \$6 billion are attributable to the sale of U.S. CE goods and services overseas. That number grows to approximately \$30 billion when indirect and induced effects are included.

II. Benefits of the Tariff-Eliminating Expansion of the Information Technology Agreement

CEA supports for immediate action to support tariff cutting expansion of product coverage for the Information technology Agreement (ITA). The ITA is one of the most commercially significant and successful trade agreements of the World Trade Organization (WTO).

Following the APEC Leaders Declaration in which Ministers agreed to playing a leadership role in launching negotiations to expand the product coverage and membership of the WTO Information Technology Agreement, high-tech industry leaders from around the world have committed to working with their governments and industry to launch negotiations on an expanded, tariff-elimination ITA.

From 1996 to 2008, total ITA product trade increased more than 10 percent annually, from \$1.2 trillion to \$4.0 trillion. The ITA has helped to drive innovation, lower consumer prices and further integrate the global industry. Initial analysis predicts that expanded coverage of the ITA could completely remove tariffs on at least an additional \$800 billion in information and communications technology (ICT) trade globally. The ITA expansion must be a focused tariff-eliminating agreement. ITA expansion would yield immediate and substantial benefits, removing tariffs on a vast array of tech products not currently covered by the agreement. We are deeply committed to working with our government and the global ICT industry to move quickly to advance this important negotiation which will expand trade, foster innovation and increase jobs around the world.

Statement of Citizen Trade Policy Commission

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
Rep. Bernard Ayotte
Rep. Margaret Rotundo

Heather Parent
Stephen Cole
Michael Harz
Michael Hiltz
Connie Jones



STATE OF MAINE

Wade Merritt
John Palmer
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Harry Ricker
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Joseph Woodbury

Staff:
Lock Kiermaier

Citizen Trade Policy Commission

March 13, 2012

Representative Dave Camp, Chairman
House Ways and Means Committee
Ways and Means Committee Office
1102 Longworth House Office Building
Washington D.C. 20515

Dear Chairman Camp:

The Maine Citizen Trade Policy Commission "... is established to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of March 9, 2012 to submit this letter to you and other members of the Ways and Means Committee offering our comments on President Obama's Trade Policy Agenda. In particular, we are advocating for significant changes in the process used to negotiate and accept foreign trade policy agreements such as, but not limited to, the Trans-Pacific Partnership Agreement (TPPA).

Maine has traditionally supported international trade when fair rules of trade are in place. As do other states, Maine intends to be an active participant in the global economy. From the Commission's perspective, the current process used to inform, negotiate and accept the provisions of a foreign trade treaty like the TPPA is in need of significant improvement.

Specifically, the Commission remains concerned that recent international trade agreements may have a negative impact on the State's constitutionally guaranteed

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/opla/citpol.htm>

authority to protect not only the public health, safety and welfare, but also regulatory authority. The Commission believes this situation has occurred in large part because the process used to formulate United States trade policy lacks transparency, fails to properly recognize the principles of state sovereignty and is bereft of any meaningful opportunity for Congressional review and acceptance. The current process minimizes the opportunity for meaningful input and review, and the Commission suggests there should be an opportunity for process change with significant improvements in transparency and participation.

In addition, the Commission strongly supports the recently stated position of the Australian government in opposition to inclusion of investor-state dispute settlement (ISDS) clauses in the TPPA. As you know, ISDS clauses give businesses from one country the power to take international legal action against the government of another country over breaches in an international trade treaty. The practical effect of ISDS clauses is the possible abrogation of federal, state and municipal law due to certain interpretations of foreign trade treaties like the TPPA. The Commission believes that, regardless of the particular national perspective in question, that the use of ISDS clauses undermines federal, state and municipal sovereignty and should not be included in international trade treaties like the TPPA.

Please contact us with any questions that you may have regarding the Commission's position on these issues.

Sincerely,

Senator Roger L. Sherman, Chair

Representative Joyce Maker, Chair

Cc: Governor Paul R. LePage
 Senator Olympia J. Snowe
 Senator Susan M. Collins
 Representative Michael H. Michaud
 Representative Chellie Pingree
 State Representative Sharon Treat

Statement of Intel



**PREPARED STATEMENT FOR THE RECORD OF
INTEL CORPORATION**

For the

**COMMITTEE ON WAYS AND MEANS
OF THE U.S. HOUSE OF REPRESENTATIVES**

On

**PRESIDENT OBAMA'S TRADE POLICY AGENDA
And
THE FUTURE OF U.S. TRADE NEGOTIATIONS**

February 29, 2012

Intel Corporation respectfully submits this testimony for the record in conjunction with the Committee's hearing on President Obama's trade policy agenda and the future of U.S. trade negotiations. Our testimony will focus on the importance of increasing market access overseas as a way to create more U.S. jobs and maintain the ones we already have. This objective is critical to the continued growth and leadership of the United States, and must be a top priority as U.S. industries face escalating competition overseas and an increasing number of governments strike preferential trade deals with other significant economies. Moreover, open and robust trade has proven time and again to improve economic welfare globally.

The U.S. government can increase market access for U.S. companies in three basic ways: (i) expand existing free trade agreements (FTAs) so they cover more markets and additional goods and services; (ii) negotiate additional robust FTAs on an accelerated basis; and (iii) use a combination of mechanisms (e.g., modernized agreements and promote persuasive best practices) to address emerging non-tariff barriers not covered by existing trade rules.

With regard to our second recommendation, we complement the Chairman and the Administration for passage of the FTAs with Colombia, Panama and South Korea. The U.S./Korea FTA (KORUS) is particularly important to Intel given the rapid growth of Korea's information economy. The Korean market is a top-ten destination for U.S. high-tech exports. KORUS eliminates tariffs on many high tech products within three years of enactment, and among other benefits, includes strong intellectual property (IP) enforcement requirements, e-commerce enabling provisions, state-of-the-art public participation rights in rulemaking and standard setting activities, and settlement authority for the Korean Fair Trade Commission.

With regard to our third recommendation, we note that traditional barriers such as local content requirements are being combined with new barriers raised by discriminatory incentives, security initiatives, and competition rules; cross-border data restrictions; and other domestic requirements that are counterproductive to both the local economy implementing them and global economic welfare. As discussed in Section V, a plethora of trade tools is necessary to effectively tackle these complex behind-the-border measures.

I. Market Access is Critical for our Industry

a. Intel Depends on Overseas Revenue to Create and Sustain Jobs at Home

Intel is a leading manufacturer of computer, communications and networking products. We have approximately one hundred thousand employees worldwide, with more than half of them based in the U.S. Our revenue last year was about \$54 billion, generated from sales to customers in more than 120 countries.

Our company is a prime example of why the U.S. government should increase U.S. exports by opening up new markets and removing or reducing existing trade barriers overseas. While three quarters of Intel's manufacturing capacity remains in the U.S., more than three quarters of our revenue is generated overseas. The revenue we generate outside of the U.S. helps create and sustain our high paying jobs at home.

Even during the strained economic climate of the last few years, Intel has continued to invest to stimulate economic and job growth. In February 2009, the company announced a \$7 billion upgrade to its manufacturing facilities in Oregon, Arizona, and New Mexico—projects that are helping to maintain approximately 7,000 high-wage, high-skill U.S. jobs while providing 4,000 contract jobs for technicians and construction workers.

In 2010, Intel announced that it will spend an additional \$6 billion to \$8 billion over the next several years to bring next-generation manufacturing technology to several existing factories across the U.S. and to build a new development factory in Oregon. This new investment will support approximately 6,000-8,000 additional U.S. construction jobs during the building phase, and eventually add approximately 800-1,000 Intel high-skilled, high-wage jobs.

And in 2011, Intel announced plans to invest more than \$5 billion in a new chip manufacturing facility, called Fab 42, in Chandler, Arizona. The new fab will create thousands of construction and permanent manufacturing jobs at Intel's Arizona site.

We have spent more than \$68 billion on U.S. operations, manufacturing and R&D, from 2002 to 2011. Most of the product manufactured from our U.S. investments will be sold to the 95% of worldwide consumers that live overseas. Access to global markets is essential to Intel's ability to create and maintain jobs in the U.S. and to our continued growth and prosperity.

b. The Semiconductor Industry's Future is Tied to Overseas Sales

Free trade is of particular importance to the growth of the entire semiconductor industry. According to the Semiconductor Industry Association (SIA), the U.S. semiconductor industry employs more than 180,000 people in the U.S. and makes almost half of the world's computer chips. This market for chips was worth about \$300 billion in 2011 and is growing every year. Over 80% of U.S. semiconductors go to customers outside the U.S. market and are sold in nearly every country in the world. According to the International Trade Commission (ITC), the semiconductor industry has been America's largest exporter when data are averaged over the last five years. However, as discussed below, the information technology industry is facing an increasing number of market access issues that need to be effectively and promptly addressed.

Exporting semiconductors creates real benefits not just for Intel's employees, but also for many other American workers. For example, those overseas sales allow leading-edge U.S. based chip makers to employ highly skilled and talented U.S. workers whose average income is almost \$100,000 per year. Additionally, domestic semiconductor makers invest about \$20 billion a year in research and development in the U.S. and invest over \$13 billion in capital equipment at home, which also spur new products and create new jobs both with our U.S. suppliers and at the semiconductor companies that are maintained by sales overseas.

II. Establish a Comprehensive U.S. Trade Policy Agenda

Intel believes that strong exports are critical to America's overall continued economic growth and the creation of good jobs in the United States in many other industries besides our own. As the U.S. government works with the private sector to find new ways to increase

domestic manufacturing, it also needs to pursue more initiatives to fulfill the Administration's goal of doubling exports by 2015.

With 95% of the world's consumers living outside of the U.S. and about 80% of global purchasing power outside the U.S., any increase in domestic manufacturing must be accompanied by additional opportunities to sell overseas. Those opportunities are created in large part by free trade agreements (FTAs), bilateral investment treaties (BITs), and other initiatives that establish the rules to force open other markets and promote and protect U.S. business interests.

There are still many barriers that need to be taken down. For example, the World Economic Forum Global Competitiveness Report for 2010-2011 listed the United States near the bottom, or 131st out of 139 economies, for exports of goods as a percentage of gross domestic product. Section V below discusses some of the non-tariff barriers that U.S. IT industries face.

According to the United Nations Industrial Development Organization's 2010 International Yearbook of Industrial Statistics, the U.S. continues to lead the world in manufacturing, with 19% of the worldwide value-added manufacturing output. However, the U.S. has dropped from first to third over the last 12 years in terms of the total quantity of goods exported.¹ As the competitiveness of other countries increases, the number of FTAs and BITs not involving the U.S. accelerates, and the variety of non-tariff barriers also increases, America may drop further in that ranking.

There is no panacea for leveling the playing field. As noted earlier, the U.S. government must use a variety of mechanisms to further increase our exports, improve our economy and thus create more U.S. jobs. Existing free trade agreements (FTAs) need to be expanded where possible so they cover more markets and additional goods and services. The U.S. government also needs to enter into additional FTAs on an accelerated basis without sacrificing their quality. Lastly, industries with trade supportive governments must work ever more closely together to shun and isolate protectionism, and show that open markets work best in the global economy.

III. Increase U.S. Exports by Expanding the Scope of Existing Agreements

Too many key markets are still subject to too few existing trade rules. We discuss several examples in this section involving multilateral agreements.

¹ Compare <http://umsi.edu/services/govdocs/usofac2000/fields/exports.html> with <http://stat.wto.org/CountryProfile/WSDBCountryPEView.aspx?Language=E&Country=US,CN>, <http://stat.wto.org/CountryProfile/WSDBCountryPEView.aspx?Language=E&Country=US>, and <http://stat.wto.org/CountryProfile/WSDBCountryPEView.aspx?Language=E&Country=US,DI>. While the WTO uses "merchandise" rather than "export" as a benchmark, the various ranking systems show the U.S. to have dropped at least three, if not four, places in terms of total goods exported since the late 90s.

1. Expand the Membership and Product Coverage of the ITA

The intent of the WTO Information Technology Agreement (ITA), negotiated some 16 years ago with strong bipartisan support,² was to promote the development of the emerging global digital economy at the lowest possible cost.³ By eliminating customs tariffs on a range of information communication technology (ICT) products in many countries, the ITA has dramatically increased U.S. exports. In fact, as noted earlier, semiconductors have been the largest U.S. export over the last five years. From 1996, when the ITA was signed, to 2008, total trade in ITA listed goods has increased more than 10 percent annually, from \$1.2 trillion to \$4.0 trillion. The dissemination of ICT without customs tariffs in many parts of the world has had a significant positive impact on the global economy by increasing productivity; creating high paying jobs and more efficient markets; raising the quality of innovation, goods, services and innovation; improving health care; and otherwise enhancing the quality of life.

But Mexico, Brazil and several other notable countries are not ITA signatories. And many of the digital products developed in the last fifteen years -- such as multi-component semiconductors, video game consoles, e-readers, and DRAMs, video game consoles, and flat panel displays -- are not covered by the ITA.

Preliminary industry studies indicate that an expanded ITA could remove tariffs on an additional \$800 billion in global ICT trade, with more than \$122 billion in U.S. ICT trade affected. The Information Technology and Innovation Foundation estimates, in a forthcoming report, that ITA expansion would increase direct U.S. exports by \$2.8 billion, boost U.S. revenues by \$10 billion, and support an estimated 60,000 new jobs.⁴

Intel strongly supports the U.S. Administration's recent efforts to begin negotiations to expand both membership and product coverage of the ITA, and we hope those negotiations can be concluded quickly.

2. Expand Membership of the GPA

Government procurement comprises a significant share of the global economy -- from 10-to-20 percent of the gross domestic product (GDP) for many countries. And, while estimates vary widely, many believe that global government procurement is a multi-trillion dollar market with the contestable share (i.e., the amount subject to international competition) being around 30% of that value.⁵

² The agreement is formally known as the "Ministerial Declaration on Trade in Information Technology Products", and was signed in Singapore on December 13, 1996 (WTO ref. WT/MIN(96)/16).

³ As former USTR Charlene Barshefsky put it, "The Information Technology Agreement . . . means that the creation of the information superhighway will be encouraged and promoted, not taxed." Statement at the conclusion of the Singapore Ministerial of the WTO, where the ITA was successfully concluded, December 1996.

⁴ This estimate assumes an average tariff of non-ITA covered ICT products of 5.3% and an average trade-weighted import demand elasticity of ITA members of 1.30.

⁵ The Size of Government Procurement Markets, OECD (2002) (using 1998 data), accessed at <http://www.oecd.org/dataoecd/34/14/1845927.pdf>; International Trade Statistics, World Trade Organization (2009) (using 2008 goods data), accessed at http://www.wto.org/english/tes_e/status_e/its2009_e/its2009_e.pdf; Options for Global Trade Reform: A View from the Asia-Pacific (Trade and Development), edited by Will Martin and Mari Pangestu (2003) at 249.

Yet, none of the BRIC countries are signatories to the WTO Government Procurement Agreement (GPA) that prevents discrimination against foreign suppliers. This has enabled China, India and Brazil to promulgate measures designed to favor local suppliers, especially those in the electronic sector, as a way to unfairly build up and favor local companies and ICT related industries. Unfortunately, such policies not only will hurt U.S. companies, but also raise consumer prices and limit product choice within the countries promulgating them.

Brazil's government purchases domestically produced goods and services, even when these cost up to 25% more than the cheapest imported products and services, if they are developed by Brazilian companies that either (i) manufacture the goods at issue in Brazil or provide the services locally; or (ii) invest in R&D and the development of technology in the country. Implementing regulations, which require an increasing amount of local content each year to qualify for the preferences, are focused on defense, healthcare and ICT.⁶

In China, goods must have at least 50% local content to qualify under the Government Procurement Law, but foreign invested enterprises that can meet that threshold continue to face barriers to participating in procurement activities. Until last year, products also had to be certified as "indigenous innovation" by having their core IP owned by a China-based company.⁷ That latter requirement was deleted after pressure from several governments.

The Ministry of Communications and Information Technology (MCIT) of India, for its part, recommended in 2011 that government procurement preferences be given to all domestically produced electronic products and products made with Indian IP.⁸ Moreover, MCIT is attempting to extend domestic government procurement preferences in the telecom sector to cover private licensees, even though that would violate the national treatment clause of the General Agreement on Tariffs and Trade. Both the draft National Telecom Policy and Manufacturing Policy propose procurement preferences for domestic product in the telecom and other strategic technological sectors.⁹ The Cabinet of India just approved a broader proposal to provide government procurement preferences, on a graded value-add basis, to all domestically manufactured electronic products (whether for the telecom sector or not).¹⁰

Russia has a narrower public procurement preference program than the other BRIC countries. In 2010, the Ministry of Industry and Trade prepared a draft decree that will enable domestic manufacturers to receive preferences in state procurements tenders of telecommunication equipment for LTE networks where not less than 50% of the stock of the company belongs to the Russian state or its citizens, and the entire product cycle (e.g., R&D, manufacturing and assembly) of components (e.g., printed circuit boards) needed for the telecom equipment that the domestic company engages occurs in Russia. In addition, the qualifying

⁶ Government Purchase Law (No. 8,666, promulgated in 1993).

⁷ For a summary of the procurement laws and regulations in China, see PRC Government Procurement Policy, The U.S.-China Business Council (July 2009); available:

https://www.uschina.org/public/documents/2009/07/government_procurement.pdf.

⁸ Progress Report on the 100-Days Plan of Action of Ministry of Communications & Information Technology Announced on January 01 This Year (April 11, 2011), DoT Action Point 8(c) and DIT Action Point 8(c). Similar procurement preferences may soon be available in other industry sectors per the Prime Minister's mandate to increase domestic R&D and manufacturing at large.

⁹ Draft National Telecom Policy, Section III.9; Draft Manufacturing Policy, Sections 1.22 and 8.2.

¹⁰ See <http://pib.nic.in/newsite/PrintRelease.aspx?relid=80074>.

manufacturer must own the rights to software used in the equipment and the required local content level for components in the telecom equipment rises each year.¹¹

These types of market preferences can significantly distort trade because government procurement comprises a significant share of the global economy. We need to find a way to incentivize other large governments to join the GPA with contract thresholds and coverage of regulatory authorities which are similar in scope to that provided by the U.S. More efficient, accountable, competitive and transparent procurement structures are increasingly critical for all governments, as they seek to provide their citizens with the highest quality goods and services within significant fiscal constraints.

IV. Increase the Number of Robust FTAs on an Accelerated Basis

As noted by ECAT in its annual report, trade flow data show how important FTAs are to the U.S. economy. Trade between the U.S. and the 17 countries with which the U.S. had FTAs in force by the end of 2011 accounted for nearly \$1.3 trillion, or almost 35 percent, of total U.S. trade and 41 percent of U.S. exports that year, while those countries represent only 7 percent of the world economy. U.S. exports to every single FTA partner country have increased dramatically after those agreements were implemented. ECAT expects a similar economic boost for American enterprises and workers once the recently approved Colombia, Korea and Panama agreements are fully implemented.¹²

Today, however, “the United States lacks an ambitious trade policy and has not kept pace with other countries in opening new markets abroad, especially in the fast-growing economies of Asia and Latin America that are now major engines of global growth.”¹³ According to WTO data, about 380 regional trade agreements (RTAs) have been negotiated worldwide and, of those, 202 RTAs have entered into force. The United States is party to only twelve such agreements with a total of 17 countries. In contrast, the European Union has 28 RTAs in force with 29 countries, and is in negotiations with India, Canada and Ukraine. China has ten RTAs in force with 20 countries, and another five in negotiation; India has 13 RTAs in force with a total of 25 countries and another three in negotiation. Similarly, when it comes to bilateral investment treaties, the U.S. lags behind in a world with nearly 3,000 BITs. In particular, the 40 U.S. BITs in force are far less than half of Germany’s 138 BITs and considerably less than China’s 70 BITs or even Korea’s 57 BITs.¹⁴

Of course, the U.S. government must be selective in allocating its limited resources and determine which governments it can negotiate with to produce the most mutual benefit. We only cover two examples here of possibilities, one of which already is underway.

¹¹ Draft “Order on approval of the parameter values, methods of the parameter value determination and the order of assignment of the status of the *Russian domestic telecommunications equipment* to telecommunications equipment manufactured within the territory of the Russian Federation,” Ministry of Industry and Trade of the Russian Federation (July, 26th, 2010).

¹² ECAT Letters to Senators Max Baucus and Orrin Hatch (June 30, 2011).

¹³ CFR Task Force, *supra* note 1, p. 3.

¹⁴ See generally http://www.wto.org/english/traop_e/region_e/rtia_participation_map_e.htm; <http://icsid.worldbank.org/ICSID/FromService>.

1. Negotiate a Comprehensive U.S./EC FTA

The discussions between the U.S. Administration and the European Commission on the need to further integrate the two economies are encouraging. However, we need action. The recently formed U.S./EU High Level Working Group on Jobs and Growth should be used to develop a barrier-free transatlantic market, which would maximize the benefits of the largest commercial relationship in the world. A trade agreement between the U.S. and the EU should be comprehensive, addressing both remaining tariffs and non-tariff barriers, even if it must be done in bite size steps that are parallel processed to provide momentum through interim successes.

2. Ensure a High Quality TPP Agreement that Will Serve as a Template for Other FTAs

The negotiations that are currently occurring in connection with the Trans-Pacific Partnership (TPP) Agreement also are very encouraging. As indicated by several examples in Section V below, USTR staff has exercised considerable effort to make the TPP agreement the gold standard for trade rules. Of interest to Intel, USTR is pushing for increased trade secret protection,¹⁵ enhanced e-commerce provisions, more robust due process protections in competition cases. However, raising the bar significantly requires more time and Intel is concerned that the high quality of the TPP agreement may be partially sacrificed as a result of the agency's strong desire to finalize negotiations this year. We would recommend that USTR continue to work diligently to maximize the momentum it has developed in the TPP negotiations, but not pursue an arbitrary deadline as the end goal. Intel also is very supportive of other governments such as Japan, Mexico and Canada joining the TPP, but only if the high standard being pursued is maintained.

V. Employ a Combination of Mechanisms to Address Emerging NTBs

At least three dozen countries have implemented national innovation strategies to increase their competitiveness and generate more economic growth.¹⁶ The nature of those strategies differs widely among governments, however, and the difference between innovation and industrial policy is often murky at best.¹⁷ U.S. companies increasingly face a host of measures intended to spur local R&D, IPR and manufacturing that are exempt from WTO requirements, do not always comply with those requirements, and/or fall within the cracks.

One prime example of such measures is the proliferation of government procurement preferences in the BRIC countries that we mentioned in Section III.2. But there are others.

For example, the Telecom Regulatory Authority of India (TRAI) has proposed a number of incentives for Indian companies that manufacture with Indian materials or incorporate Indian

¹⁵ Intel notes, however, that many companies in a number of industries do not believe that USTR is pushing hard enough on a critical emerging issue. The loss of trade secrets, valued at \$5 trillion by one estimate, is increasing globally due to increased competitiveness, global data flows, and other factors.

¹⁶ Stephen Ezell, "America and the World We're Number 40," *Democracy: A Journal of Ideas*, Issue # 14, Fall 2009, <http://www.democracyjournal.org/article.php?ID=6703>.

¹⁷ See generally "The Good, The Bad and The Ugly (and The Self-Destructive) of Innovation Policy: A Policymakers Guide to Creating Effective Innovation Policy," The Information Technology and Innovation Foundation (October 2010).

IP, regardless of whether the products are sold to the government or commercial market.¹⁸ These incentives include tax breaks and R&D grants that potentially violate the WTO Agreement on Subsidies and Countervailing Measures, which prohibits conditioning incentives on the use of local content. Moreover, a task force operating under the Indian Ministry of Corporate Affairs has suggested that, as a bedrock principle of competition policy, intellectual property owned by a dominant company be made accessible to any third party that needs it to compete. On a related note, in 2010 a division in India's Ministry of Commerce argued that "compulsory licensing has a strong and persistent positive effect on domestic invention."

A number of the indigenous innovation policies that Indian regulatory authorities have been promulgating since early 2010 are very similar to those which the Chinese government has promulgated over the last seven years and that the U.S. government is familiar with. For instance,

- India's draft National Telecom Policy not only links government procurement preferences to domestic product, but also to domestic IPR. As many in Congress well know, early last year the U.S. Administration succeeded in persuading China to delink procurement preferences from the location or origin of IPR.
- As with the network regulations that the Certification and Accreditation Administration of China (CNCA) issued several years ago, in 2010 India's Department of Telecommunications required the disclosure of source code as part of its certification process.¹⁹ The U.S. and other governments were able to persuade India, but not China, to remove that troublesome disclosure requirement.
- The Chinese government has supported an array of "voluntary" national standards that favor domestic technologies even when relevant international standards exist. Likewise, the Government of India is now supporting the development of Indian standards in the telecom sector.

The trend to pursue trade distorting innovation and manufacturing policies is not limited just to China and India, but is spreading to other regions.

Brazil, for example, is experimenting more deeply with industrial policy in the technology sector by providing tax incentives for local production and investment.²⁰ The general legal framework for encouraging local R&D and manufacturing in Brazil has been in place for several decades, but recent implementing regulations on products such as tablets are enforcing the law and micromanaging local content additions. Moreover, as in India, Brazilian policy linking incentives to local content is spreading to other regulatory areas such as spectrum allocation. Specifically, a recent auction proposal by Brazil's agency over national telecommunications would require a winning bidder to purchase an annually increasing

¹⁸ See generally *Recommendations on Telecom Equipment Manufacturing Policy*, Telecom Regulatory Authority of India (12th April, 2011) [hereinafter "TRAI Recommendations"]. The TRAI Recommendations were submitted by to the Ministry of Communications and Information Technology for its consideration.

¹⁹ See Template of the Agreement Between Telecom Service Provider and the Vendor of Equipment, Products and Services (28 July 2010).

²⁰ See generally Brazil's Information Technology Law, No. 8,248 (January 23, 1991)

percentage of locally manufactured and locally designed goods for the telecommunications and data networks that would use the spectrum being auctioned.²¹

Argentina, for its part, is targeting all imports into its country by imposing ever more restrictive import licensing restrictions under which a license is not granted within the WTO required 60 day period unless affected companies meet unrelated government demands, such as agreeing to manufacture locally. Many U.S. companies still have products awaiting entry and are not making anticipated sales in the country.²²

There is no single solution to solve these intertwined, complex and evolving trade distortive measures. Rather, the U.S. government should continue to employ a combination of mechanisms to convince governments to pursue a more open and proven approach to increase their competitiveness. To some extent, as noted below, the U.S. government already has been doing that with trade distortive regulations and policies that China has developed and enacted. Yet those existing mechanisms can be applied more robustly and to other emerging economies like India and Brazil, which also are struggling to develop policies that enhance their economies.

The following are some of the mechanisms that have shown to help address more fully the complex and evolving trade distortive measures.

1. Address Trade Issues Preemptively in Bilateral and Multilateral Fora

The U.S. Administration has had some success in working with China on a number of trade related issues in the U.S./China Joint Commission on Commerce and Trade (JCCT) and the more strategic or high level U.S./China Strategic and Economic Dialogue (S&ED). Through the JCCT the Chinese government has made many commitments, including the following:

- Stay out of royalty negotiations between IPR holders and let market forces govern,
- Improve IPR enforcement,
- Remain technology neutral regarding the standard or technologies used in 3G or successor networks,
- Delink government procurement from the origin of IPR,
- Cut back on information security certification rules that would bar a number of U.S. network products from the Chinese market so that they apply only to government procurement,
- Submit an improved GPA offer,
- Allow foreign stakeholders to participate in national standard setting activities as well as technical regulatory and conformity assessment developments,
- Provide a detailed account of its subsidies to the WTO by the end of 2005,
- Suspend indefinitely its proposed implementation of WAPI as a mandatory wireless encryption standard, and

²¹ See generally ANATEL Proposal, Public Consultation No. 4 on the proposed tender rules for the 450 MHz and 2.5 GHz spectrum bands (February 2012).

²² Multi-Trade Association Letter to Ambassador Ron Kirk and Deputy Assistant Michael Froman (February 10, 2012).

- Eliminate its 70 percent local content requirement for wind powered equipment.²³

A number of these JCCT commitments have been implemented. Others have not, or have been only partially implemented and often in a delayed manner. Still, as non-binding fora, the JCCT and S&ED have been very helpful because they allow and even encourage dialogue on general economic policies and specific trade issues (whether covered by trade rules or not) before they create significant damage. The U.S. Administration, however, may want to more carefully track the completion of the Chinese commitments made to date. In addition, the Administration may also want to apply a similar model to its U.S./India bilateral fora and the U.S./EU TEC, as those mechanisms do not seem to get the same attention or generate similar commitments from Indian or EU officials.

2. Establish Additional Best Practices and Principles Through Multilateral Fora

The development of international best practices, principles and standards can help fill in the “regulatory gaps” not suited for binding international agreements. These alternatives to national regulation have the unique benefits of being more flexible (e.g., not locking in technology), are easier to update, and ensure greater interoperability. Because of its non-binding nature, the Asia Pacific Economic Cooperation (APEC) has experimented extensively with principles and practices as guidelines to further enable the digital economy in its 21 member economies while balancing IPR, privacy, security, and other legitimate concerns.

For instance, APEC’s Digital Prosperity Checklist (“DPCL”) is “designed to assist APEC economies in promoting the use and development of ICTs as a means to enhance their ability to participate in the global digital economy.” To that end, the DPCL “will provide a unique, yet critical tool for individual APEC economies to evaluate whether their domestic legal, regulatory, and trade policy frameworks are designed to positively impact the capacity of ICTs to generate value for their economies.”²⁴ The DPCL references a number of ICT best practices and standards in connection with investment, infrastructure, innovation, intellectual capital, information flows, and integration of industries with the global economy. The DPCL best practices and standards developed with industry assistance serve as guides for national legislation where appropriate. As such, they should be reinforced by repeatedly referencing them in official documents and highlighting APEC economies that follow them.

There are various ways that the U.S. government could provide even more support than it already does for standards and best practices that address thorny trade issues not capable of adequately being solved through FTAs. Several examples follow.

A. Time Tested Innovation Principles

The drive by various governments to increase indigenous innovation makes sense as they seek to rise up the value chain and create more jobs within their countries. The challenge lies in crafting and implementing such policies so that they are both effective domestically and not trade distortive internationally.

²³ See “China’s JCCT Commitments, 2004-10,” The US-China Business Council (As of December 16, 2010).

²⁴ APEC Digital Prosperity Checklist (November 10, 2008).

The U.S. Administration and China agreed to develop some very high level time tested innovation principles to guide each government in developing policies that are not trade-distortive. The U.S. high tech industry then worked with USTR to develop some more robust innovation principles, which APEC adopted in November of 2011. Then, the U.S. Administration wisely breathed more life into the APEC principles in the U.S./China JCCT held several weeks later:

“Building on the innovation principles agreed to in the 2011 APEC Leaders’ Declaration, China and the United States agree to use the JCCT Intellectual Property Rights Working Group to study investment, tax and other regulatory measures outside of government procurement, with the first phase of study in 2012 covering investment and tax, and the second phase in 2013 covering key measures in other areas, to determine whether the receipt of government benefits is linked to where intellectual property is owned or developed, or to the licensing of technology by foreign investors to host country entities. The two sides will actively discuss removal of these barriers that distort trade and investment.”²⁵

APEC’s sound innovation principles should be promoted elsewhere. The U.S. and the EU have an Innovation Work Group established under the Transatlantic Economic Council (TEC)²⁶ that could develop similar principles, for example by expanding the U.S./EU principles on ICT services that the two governments adopted last year.²⁷ In fact, the Trans-Atlantic Business Dialogue has submitted a comprehensive set of innovation principles for adoption by both governments, but to date neither one has indicated a desire to do so.

B. Global Information Security Standards and Best Practices

Industry and government have an equal incentive to ensure and increase information security, including cybersecurity.²⁸ Industry seeks a secure cyber infrastructure that will encourage commercial activities and the continued growth of the global digital infrastructure. Governments want to (1) ensure that cyberspace’s benefits continue to accrue to their economies and citizens, and (2) prevent criminals from using cyberspace to undertake fraud, espionage, crime, and terrorist activities - activities that traditionally occurred offline.

Fortunately, governments, infrastructure owners, operators and users, and the information technology industry have a variety of tools to address information security and cybersecurity risks and challenges. These tools include technology standards, training, guidelines and best practices on information sharing, risk management, etc. As governments seek to address risks in cyberspace, it is important that any measures they adopt properly reflect the borderless, global, interdependent cyber infrastructure. Internationally harmonized cybersecurity measures will

²⁵ See <http://www.commerce.gov/news/fact-sheets/2011/11/21/22nd-us-china-joint-commission-commerce-and-trade-fact-sheet>.

²⁶ See <http://www.state.gov/p/eur/rt/cu/tec/>.

²⁷ See <http://eurolert.net/en/news.aspx?id=12177>.

²⁸ The interdependent network of information system infrastructures that includes the Internet, telecommunications networks, computer systems, embedded processors and controllers, and digital information is collectively known as “cyberspace.” Security enables this global digital infrastructure by creating a trusted, robust, and interoperable environment in which economic transactions and activities can occur.

promote interoperability, minimize “weak links” that result in vulnerabilities, lower costs for businesses that can deploy security measures globally, and free up vendors’ resources to continue to invest and innovate. As noted in this Administration’s Cyberspace Policy Review, “International norms are critical to establishing a secure and thriving digital infrastructure.”²⁹

Joint action from government and industry is necessary to address evolving security challenges in the global environment. They need to work together to develop international standards, policies and practices that take into account the dynamic, changing, and complex cyber environment, and adapt at cyberspace speed to emerging technologies, business models, and threats. Cybersecurity measures that are adopted by a country without reliance on international policies and practices or technical assistance derived from a robust private/public partnership create uncertainty and inhibit the growth of e-commerce. For instance, according to various sources, the building of a telecommunications infrastructure in India slowed significantly last year because that government, without an official consultation process, attempted to mandate contractual terms between telecommunications equipment vendors and Internet Service Providers for security reasons.

The “Encryption Regulation Best Practices” developed by the World Semiconductor Council (WSC) provide an excellent example of how private/public partnerships can tackle modern day cross-border issues effectively. Encryption is now ubiquitous in widely available ICT, including semiconductors. For those widely available ICT products, the WSC best practices -- developed in 2009 and refined in 2010³⁰ -- establish a presumption of no regulation except in narrow and justifiable circumstances (e.g., resulting out of international conventions such as export controls to prevent proliferation of munitions and weapons of mass destruction to targeted countries or targeted end users). To the extent that encryption regulation is necessary, the WSC best practices state that:

- Such regulations should not directly or indirectly favor specific technologies, limit market access or lead to forced transfer of intellectual property;
- Any regulatory requirements must be applied on a non-discriminatory basis and respect intellectual property rights;
- Global collaboration and open markets for commercial encryption technologies should be strongly encouraged as both inherently promote more secure and innovative ICT products; and
- Any necessary licensing procedures should be transparent, predictable and consistent with international norms and practices.

These Encryption Regulation Best Practices were adopted by the six governments that have trade associations in the WSC. These governments are China, South Korea, Taiwan, Europe, Japan and the United States. The WSC best practices should be promoted globally

²⁹ Cyberspace Policy Review: Assuring a Trusted and Resilient Information and Communications Infrastructure (June 26, 2010).

³⁰ See Joint Statement of the 14th Meeting of the World Semiconductor Council, Free and Open Markets, Soul Korea (May 27, 2010).

through other vehicles to prevent countries like Russia and India from enacting encryption regulation that could significantly impact the importation of U.S. IT products and reduce the security of domestic digital infrastructure by preventing leading edge products from being used.

C. Incorporate Best Practices into FTAs

USTR should consider using FTAs as a legal tool to push for, support, and even reference relevant international standards and best practices. For instance, in the information security space, FTAs could rely on the common criteria assurance procedure and incorporate emerging APEC work product “to develop options for effective cyber security initiatives against cyber threats,”³¹ assuming those initiatives turn out to be feasible and well balanced.

Such an effort would not be unprecedented. We understand the TPP agreement under negotiation would establish a right to cross-border data flows in conjunction with relevant service commitments made by each Party (e.g., computer services), subject only to legitimate privacy requirements that don’t interfere unnecessarily with e-commerce. Specifically, USTR has indicated that the relevant TPP provision references APEC’s Cross-Border Privacy Rules³² as one option to accommodate privacy concerns. These APEC principles were developed to allow cross-border flows of information while ensuring both the protection of consumers.

D. Find Ways to Establish “Living Agreements”

We must not only increase the pace of trade negotiations, but also ensure that the agreements being negotiated effectively address as many forms of emerging non-tariff barriers as possible. As Intel testified in a Senate hearing in 2010 on International Trade in the Digital Economy, there are a number of emerging trade barriers specific to IT goods and services that need to be addressed.³³ For example, much progress still needs to be made in liberalizing digital services. We are confident that similar gaps exist in other dynamic industries as product cycles continue to accelerate in time.³⁴

USTR has improved and modernized the language FTAs over time. Of relevance to Intel, FTAs now enable e-commerce (as noted earlier); allow trade in both the equipment and devices that make up the IT infrastructure; and also allow trade in the digital goods and services the IT infrastructure enables. Moreover, the latest model language for FTAs contains various provisions requiring the Parties to cooperate on an ongoing basis; for example, to ensure regulatory alignment with international technology standards and prevent deceptive practices in

³¹ Draft Okinawa Declaration, “ICT as an Engine for New Socio-economic Growth,” The Eighth APEC Ministerial Meeting on the Telecommunications and Information Industry (TELMIN 8) (30-31 October, 2010, Okinawa, Japan).

³² Although one of the latest free trade agreements approved by Congress, the U.S./Korea US FTA, acknowledges the importance of protecting personal information (Art. 15.8), it does not provide any other guidance on how to achieve that objective. In theory, therefore, Korea could take an overly stringent approach to protecting privacy rights that would disadvantage U.S. industry.

³³ See generally, Prepared Statement of Intel Corporation, “International Trade in the Digital Economy,”

Subcommittee on International Trade, Customs, and Global Competitiveness, U.S. Senate (November 18, 2010).

³⁴ See “Forced Localization of Global Companies Business Activities,” Handout given at The 2011 Global Services Summit: Engaging the Dynamic Asian Economies, Washington, DC (July 20, 2011).

e-commerce to enhance consumer welfare.³⁵ Such cooperative mechanisms are important to expand an FTA's capability to evolve as growth of the digital economy creates new challenges.

Another way to lengthen the useful life of an FTA is to include a periodic review mechanism where the negotiating parties commit to upgrade and expand the FTA. There is precedent for this in the FTA between Australia and New Zealand called Closer Economic Relations (CER). After initial adoption of the agreement's predecessor, there were several formal reviews every three or four years that resulted in additional provisions being added. The parties then decided to conduct annual reviews of CER. A long list of additional agreements resulted from these annual reviews. One of the most important results of CER was the Protocol on the Acceleration of Free Trade in Goods, which resulted in the total elimination of tariffs or quantitative restrictions between the two countries. This agreement was finalized five years ahead of schedule.³⁶

VI. Conclusion

As Congress continues to explore ways to increase the competitiveness of U.S. industries, Intel recommends that it also work in parallel with the Administration to open up the biggest and fastest-growing emerging markets using a variety of mechanisms tailored to the issues at hand and to the targeted markets. These mechanisms should include mutually beneficial commitments on complex trade distortive issues derived from non-binding regular bilateral dialogues; the increase in and use of modern rules that take into account emerging non-tariff barriers; and the promotion of best practices and principles where FTAs do not reach the issues being addressed. In sum, we need an increase in proactive standards, practices and binding international rules that are modernized to further reap the benefits of a digital economy. This recommended trade agenda is ambitious, but necessary to ensure America is in a position to effectively compete on a level playing field that benefits the entire global economy.

³⁵ See, e.g., KORUS Articles 9.4.1 & 15.5.2, 3.

³⁶ See generally <http://www.newzealand.embassy.gov.au/wln/CloserEconRel.html>; http://en.wikipedia.org/wiki/Closer_Economic_Relations.

Statement of Philippine Embassy



PASUGUAN NG PILIPINAS

WASHINGTON, D.C.

EMBASSY OF THE PHILIPPINES

14 March 2012

The Honorable Dave Camp
Chairman, House Committee on Ways
and Means
United States House of Representatives
341 Cannon House Office Building
Washington, D.C. 20515

The Honorable Sander Levin
Ranking Member, House Committee on
Ways and Means
United States House of Representatives
1236 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Camp and Ranking Member Levin,

I wish to thank you for this opportunity to submit comments relative to the Hearing on President Obama's Trade Policy Agenda and the Future of U.S. Trade Negotiations. As a key ally and successful trading partner, the Philippines appreciates the importance of a renewed focus on global trading relationships and commends the Committee for their efforts in this regard.

The Philippines and the United States have a long and historically meaningful partnership and pursue common ideals of democracy and freedom. Our cultural ties go back over a century and last year we marked 60 years of military and security cooperation under the Philippines-United States Mutual Defense Treaty. An important aspect of this close relationship is our very balanced bilateral trade relationship. It is unfortunate that despite this balance and our strong historical ties, we have not had a bilateral trade initiative in almost half a century. We believe such arrangements will provide impetus to further deepening our trading relationship for our mutual benefit.

The SAVE Our Industries Act (H.R. 2387) will provide a notable step to further our bilateral relationship and strengthen our economies. The SAVE Act has been introduced by Congressman Jim McDermott and Congressmen Brian Bilbray and Bob Filner as co-chairs of the Philippine Friendship Caucus, to provide duty-free access for Philippine made apparel into the U.S. market. This bill will strengthen our struggling apparel industry, allowing it to compete more effectively with China while providing a meaningful export market for U.S. textile products.

The SAVE Act will provide benefits to U.S. businesses and workers. In 2011 62% of U.S. textile exports were sent to the NAFTA/CAFTA-DR regions. While the amount of U.S. textile exports to Asia is increasing it is still a minor market for your industry. The SAVE Act would open a vast new export opportunity that will drive increased production and employment in the United States.

PASUGUAN NG PILIPINAS



EMBASSY OF THE PHILIPPINES

Washington, D.C.

With the lifting of textile and garment quotas and the consolidation of China's power as a leading exporter of textile and garments, the Philippine apparel industry has seen dramatic losses in production and employment. In 2003 the Philippines employed 600,000 direct workers in our apparel manufacturing sector, we now employ about 150,000. In 2006 we exported \$2 billion in apparel to the United States, in 2011 it was just over \$1 billion. The SAVE Act would revive this industry, strengthen our trading relationship and provide the building blocks to an expanded trade relationship with the United States possibly through a bilateral or multilateral agreement.

The Philippines is known for our ability to manufacture mid- to high-end garments because of our needlework capabilities and skilled workforce. This type of garment production takes place nearly exclusively in Asia, likely with little or no U.S. content. This bill will open up a competitive sourcing option in Asia for U.S. brands and retailers, especially now as many look to diversify out of China, and provide new opportunities to use U.S. inputs.

The US rebalancing towards Asia creates new opportunities for Philippine-US engagement that must embrace the full range of our relations. It is because of this and the importance of our garment sector that the Philippine government holds the SAVE Act as a top priority in our trading relationship with the United States. While we have expressed our interest in joining the Trans-Pacific Partnership, it is likely that several years will pass before our membership is completed. Thus the SAVE Act is a vital stepping stone to bridge our garment industry until such time when we could participate in the TPP.

As you look for ways to expand opportunities for U.S. business abroad, I am confident that you will find value in attaching importance to SAVE ACT and support its passage in the 112th Congress.

Sincerely yours,

(ORIGINAL COPY SIGNED)
JOSE L. CUISIA, JR.
 Ambassador



PASUGUAN NG PILIPINAS

WASHINGTON, D.C.

EMBASSY OF THE PHILIPPINES

Person(s) and/or organization(s) to whom the above statement will be attributed: **Ambassador Jose L. Cuisia, Jr. Embassy of the Philippines Washington, D.C.**

Submitted by: Mr. Ariel Rodelas Penaranda (Minister for Legislative Affairs), Embassy of the Philippines, 1600 Massachusetts Ave NW, Tel. No. 2024679389, E-mail: ariel.penaranda@philippinesusa.org

Statement of Southern Shrimp Association



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**WRITTEN COMMENTS OF
THE SOUTHERN SHRIMP ALLIANCE
ON
PRESIDENT BARACK OBAMA'S TRADE POLICY AGENDA AND THE FUTURE OF
U.S. TRADE NEGOTIATIONS
BEFORE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
HEARING DATE: FEBRUARY 29, 2012
SUBMISSION DATE: MARCH 8, 2012**

The Southern Shrimp Alliance (SSA) is submitting written comments to the Committee on Ways and Means to emphasize the importance of strengthening food safety protections in future U.S. trade negotiations. In particular, the proposed Trans-Pacific Partnership (TPP) Free Trade Agreement includes Malaysia and Vietnam, countries with seafood exporting industries that present significant food safety issues.

SSA is a non-profit alliance of members of the shrimp industry in eight states committed to preventing the continued deterioration of America's domestic shrimp industry and to ensuring the industry's future viability. SSA serves as the national voice for the shrimp industry in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas.

In a letter to Ambassador Kirk dated March 7, 2012,¹ SSA set out a detailed explanation of its concerns regarding the seafood export industries of Malaysia and Vietnam. Because these concerns can be usefully addressed within the context of the ongoing TPP negotiations, these comments seek to underscore the significance of the challenges presented by the seafood exporting industries of Malaysia and Vietnam to our food safety regulatory system.

Seafood exporters in Malaysia have acted as a conduit of transshipment for tainted Chinese shrimp in order to evade the controls of the U.S. Food and Drug Administration's (FDA) Import Alert 16-131,² as well as evade antidumping duties imposed on Chinese shrimp.³ Under Import Alert 16-131, shrimp exported from China to the United States is subject to detention without physical inspection unless the exporter has met the strict criteria for exclusion for the Import Alert. Rather than meet the criteria for exclusion, some Chinese exporters have worked with Malaysian entities to ship shrimp to the United States declared to be a product of Malaysia. This blatantly illegal activity substantially undermines the efficacy of the FDA's oversight of imported food products.

SSA has identified a number of Malaysian companies that appear to be engaging in transshipment to evade both the FDA's Import Alert and antidumping duties on Chinese shrimp. This has not been difficult, as the evasion schemes are blatant. Indeed, one Malaysian exporter shipped huge quantities of frozen shrimp and barrels of honey to the United States purported to be a product of Malaysia. The exporter shipped nothing else, just shrimp and honey. Both products, when produced and exported from China, are subject to antidumping duties as well as enhanced FDA oversight because of contamination with banned antibiotics.

Nevertheless, although the Malaysian parties participating in these schemes are readily identifiable, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) officials have repeatedly reported to SSA that the Malaysian government has declined to authorize investigations of these facilities. SSA understands that absent the express consent of Malaysian entities, CBP and ICE investigators cannot validate that merchandise declared to be a product of Malaysia is, in fact, produced in Malaysian facilities. At the same time, refusals to allow CBP and ICE investigations appear to have no negative impact on the ability of Malaysian exporters to ship merchandise to the U.S. market.

As the Administration seeks to conclude a good TPP agreement this year, Malaysia's reported unwillingness to assist in shutting down the circumvention of U.S. food safety laws is indefensible. A change in Malaysia's approach to working with U.S. government officials should be a prerequisite for further TPP discussions.

¹ <http://www.shrimpalliance.com/new/wp-content/uploads/2012/03/Letter-to-USTR-re-TPP.pdf>

² http://www.accessdata.fda.gov/cms_ia/importalert_33.html

³ U.S. Government Accountability Office, "Seafood Fraud: FDA Program Changes and Better Collaboration among Key Federal Agencies Could Improve Detection and Prevention," GAO-09-258 (Feb. 2009) pp. 15, 20.

With respect to Vietnam, SSA has sent two letters to the FDA exhaustively describing the findings of other major seafood importing nations regarding Vietnamese shrimp imports.⁴ Both Japan and Canada have reported a sharp increase in the number of Vietnamese seafood imports found to be contaminated with harmful antibiotics and/or herbicides. In fact, Japan reported that fully eight percent of all of the cases of imported food rejected by the government in 2011 were for Vietnamese shrimp contaminated with harmful antibiotics or herbicides.

As explained in SSA's March 7th Letter to Ambassador Kirk, the problems with Vietnamese seafood exports have significantly worsened. In the first two months of 2012, 22 of Japan's report 175 rejections of imported food have been for Vietnamese shrimp contaminated with antibiotics: 19 for the presence of enrofloxacin, a banned fluoroquinolone, with the remainder rejected for the detection of nitrofurans, Trifluralin, or chloramphenicol. Japan's findings of prevalent fluoroquinolone contamination are mirrored in Canada: The Canadian Food Inspection Agency currently lists 32 Vietnamese seafood exporters on its Mandatory Inspection List for fluoroquinolone.⁵ In turn, according to Vietnamese press reports, Vietnamese seafood exporters admit that banned antibiotics are used in the country's aquaculture and have publicly called on the government to ban these substances.⁶

The FDA responded to the Southern Shrimp Alliance's letters on February 29, 2012. In its response, the agency observed:

Since FDA's last assessment in 2008, Vietnam's competent authority underwent organizational changes. Consequently, a number of regulatory Directives and Decisions that are legally enforceable in Vietnam, including Ministry of Fisheries Decision No. 29/2003/QĐ-BTS (November 1, 2003) that required all consignments of basa, tra, shrimp and crabmeat to be tested before shipment to the U.S., has not been extended or has been revoked.

Thus, at the same time as the broad contamination of seafood exports with banned antibiotics and herbicides was being confirmed by the Japanese and Canadian governments, the Vietnamese government unilaterally renounced its commitment to test consignments of seafood products to the United States. To no one's surprise, Vietnamese shrimp imports into the U.S. market were worth nearly \$520 million in 2011 – the highest total since 2003.

For Vietnam, a continuing commitment to ensuring the health and safety of American consumers must be a baseline prerequisite for further TPP discussions. Vietnam's unwillingness to continue to safeguard the wholesomeness of its seafood exports to the U.S. market – particularly in light of widespread findings of contamination – is entirely inappropriate.

⁴ <http://www.shrimppalliance.com/new/wp-content/uploads/2011/10/10-5-11-Letter-to-FDA-re-Vietnamese-Seafood-Imports1.pdf> and <http://www.shrimppalliance.com/new/wp-content/uploads/2012/01/Vietnamese-Seafood-Imports1.pdf>.

⁵ <http://active.inspection.gc.ca/scripts/fispoi/ial/IALFront.asp?lang=e>.

⁶ Intellasia, "Vietnam Shrimp Exports to US May Face Enrofloxacin Tests," (Jan. 19, 2012), <http://www.intellasia.net/news/articles/business/111354282.shtml>.

[Material Submitted for the Record]

Questions For The Record

Questions for the Record for Ways and Means Full Committee Hearing on President Obama's Trade Policy Agenda

Congressman Roskam

**Questions for the Record for Ambassador Kirk Hearing
Ways and Means Full Committee Hearing on President Obama's Trade Policy
Agenda with U.S. Trade Representative Ron Kirk**

- 1.) During his December 2011 testimony before the Committee, Ambassador Marantis highlighted financial services as an industry that served to benefit from the TPP agreement. As negotiations move forward this week in Melbourne, and in light of Ambassador Marantis' support for the benefits of a strong agreement with respect to financial services, can you give us assurances that the agreement will have a strong financial service sector chapter? Are there countries or outstanding issues that will impede the conclusion a strong and robust financial services chapter? How do you believe the possible inclusion of Canada, Mexico and Japan will alter the provisions of the financial services chapter?

Rep. Lloyd Doggett:

**Questions for the Record for Ambassador Kirk Hearing
Ways and Means Full Committee Hearing on President Obama's Trade Policy
Agenda with U.S. Trade Representative Ron Kirk**

Question #1

On February 29, 2012, in response to my question at the House Ways and Means Committee hearing on President Obama's Trade Policy Agenda, you testified that transshipment of Chinese goods through South Korea has not become an issue under the Korea-U.S. FTA. At that hearing, we had the following exchange:

REP. LLOYD DOGGETT: Are there also transshipment issues with Vietnam, Malaysia, some of the other countries involved and has transshipment of Chinese goods picked up in Korea since that agreement has been ratified?

AMB. RON KIRK: It has not in Korea. We were very -- because of you all's concerns particularly about North Korea as you know, we were very careful to craft an agreement, and I would say Korea and the U.S. were interested in drafting an agreement that would help businesses in Korea and the U.S., not in China.

According to the Korea Customs Service, the amount of products illegally labeled "Made in Korea" was estimated to have doubled from a value of 63.5 billion won (\$58.6 million) in 2008 to 116.9 billion won in 2010. Moreover, a 2010 study on duty evasion prepared

for Senator Ron Wyden found that a number of Chinese companies were willing to help evade U.S. duties by methods such as illegal transshipment. Finally, U.S. Customs investigations have resulted in indictments and convictions for duty evasion on goods from China.

What will you do to ensure that transshipment of Chinese goods is not an issue in Korea and will not become an issue in Vietnam and Malaysia under the TPP?

Question #2

President Obama has committed to creating “an unprecedented level of openness in Government.” However, the TPP negotiations have been shrouded in secrecy. When will you release negotiated texts, which are already available to the foreign governments, and other relevant documents to be fully reviewed and discussed by the American people?

Rep. Tom Reed:

Question for the Record Committee on Ways & Means Hearing with USTR Ron Kirk

For Ambassador Kirk:

Mr. Ambassador,

As you know, the United States makes some of the finest wines in the world. Of course, I personally think that the best come from the Finger Lakes region of New York State. In my district alone there are nearly 70 vineyards with dozens more in the region. More exports of New York products means more jobs for New York’s workers.

I’ve increasingly heard from winemakers in my district, and I’m sure this is happening across the U.S., who are selling more and more of their product overseas as global demand for wine grows – I hope we can work together to expand exports even further.. Some of the greatest increase in wine demand has been seen in Asia, and as you know this region has tremendous export potential. However, U.S. wine exporters often have to battle against burdensome regulations, senseless labeling requirements and other barriers aimed at keeping out wine imports.

In addition, the European Union is actively trying to impose its baseless geographic indicator standards for wine on Asia and other parts of the world, preventing U.S. wines from including common terms, like Chateau, on their labels.

Mr. Ambassador, how could the Trans-Pacific Partnership (TPP) break down these import restrictions in the Asia-Pacific region, so that U.S. winemakers can fairly compete?

I’m also interested in hearing about areas in which we can move forward with future trade agreements in a manner that will help this domestic industry.

I look forward to your response on these important issues.

Sincerely,

Tom Reed
Member of Congress

Rep. Geoff Davis (KY-04)

**Questions submitted for the record for Ambassador Ron Kirk
Ways and Means Full Committee Hearing on President Obama's Trade Policy
Agenda with U.S. Trade Representative Ron Kirk**

1. Kentucky is the nation's number one burley tobacco producing State in the country. In 2011, over 100 million pounds of U.S. burley entered the export market with a large percentage originating from Kentucky. Recently, the Kentucky General Assembly passed a resolution detailing the important economic impact tobacco, and our farmers' ability to export tobacco, has on the Commonwealth's economy.

As we continue to negotiate the Trans-Pacific Partnership, I appreciate your commitment to keep Congress updated regarding the possible exclusion of tobacco. As you have said, USTR is determining the best way to balance an ambitious and comprehensive trade agreement with our goal of not treating other countries' manufacturers differently than those that operate within the U.S. Please elaborate further as to how either including or excluding tobacco would impact our policy of non-discrimination? Have you been in discussion with the U.S. Department of Agriculture on this issue or any other federal departments or agencies? If so, please share with the Committee the input they have provided.

2. One of the companies in the Fourth District of Kentucky is MAG, a medium-sized successful machine tool and systems company. Their success is dependent on the ability to access machine tool markets overseas. However, antiquated Cold War-era export regulations have significantly limited their export market.

You mentioned that the President has directed the Department of Defense and the Department of Commerce to evaluate our export regulations and modernize these

controls. Furthermore you said that the Department of Commerce is working in an expedited manner to evaluate these regulations.

I appreciate your acknowledgement of the complications outdated export regulations can have on businesses, and the need for a thorough review of these controls to ensure sensitive technology is not shared inappropriately. What role does the U.S. Trade Representative's office have in the review of our export regulations? When will such a review be completed? Furthermore, have there been any preliminary recommendations from the Department of Commerce or any other federal agency or department on this issue?

**Congressman John Lewis (D-GA) Opening Comments and Questions for Ambassador Kirk Ways and Means Full Committee Hearing on President Obama's Trade Policy Agenda with U.S. Trade Representative Ron Kirk
February 29, 2012
Questions for Ambassador Kirk**

Good Morning, Mr. Ambassador. It is always good to see you again.

Let me begin by echoing the concerns raised by my good friend and colleague, Congressman McDermott. We hope that the administration will exert all possible pressure for swift consideration of the Third Country Fabric provision extension and the addition of South Sudan to AGOA. We hope this will remain a top legislative priority for USTR.

As you know I, along with many of my colleagues, wrote and spoke with the administration about the importance of protecting access to medicines in TPP. I would like to go on the record yet again in urging the administration to reach for the ceiling, not the floor, on this important issue.

You may remember that for a very long time, I have been crystal clear in detailing my strong concerns regarding the human rights, labor rights, and rule of law realities in Colombia. With a few exceptions, labor conditions in Colombia are not improving; the murders, the threats, and intimidation of workers who try to exercise their basic rights persist; and little, if any progress is being made in investigating, prosecuting and punishing the perpetrators of this violence. Clearly, much is left to be desired in the implementation of their Labor Action Plan commitments.

- Recently, the Administration announced that it would be giving \$2 million to fund International Labour Organization activities in Colombia. Unfortunately, the overall U.S. commitment to ILO funding was reduced in the President's budget.

Can you explain the rationale for this overall reduction and outline your expectations for the ILO and how it will help Colombia implement its Labor Action Plan obligations?

- As you well know, the State Department's Race, Ethnicity, and Social Inclusion Unit (RESIUNIT) is responsible for implementing the U.S.-Colombia Action Plan on Racial and Ethnic Equality. RESIUNIT addresses some of the key issues on the frontlines of U.S.-Colombia trade policies – land rights, business diversity, corruption, access to capital, and human rights.

How is USTR staff working with RESIUNIT and the humanitarian aid programs within USAID to ensure that the FTA does not undermine the progress of the Colombia Action Plan, the Labor Action Plan, and other efforts to address Indigenous and Afro-Colombian rights, economic opportunities, and related issues as an indirect consequence of the U.S.-Colombia FTA?

- Since there was nothing in the Labor Action Plan requiring Colombia to reduce the level of violence against labor activists, land rights activists, or members of any other subgroup, what exactly does the Administration plan to do about the violence in relation to putting the Colombia FTA into force?

In closing, I would like to commend the President for yesterday's announcement regarding the creation of a new Interagency Trade Enforcement Center (ITEC). A key to our economic competitiveness, recovery, and growth is challenging unfair trade practices around the world.

Again Mr. Ambassador, thank you for your thoughtful consideration of my questions and concerns.

Congressman Earl Blumenauer
Questions for the Record for Ambassador Kirk
February 29, 2012 Hearing on President Obama's Trade Policy Agenda
with U.S. Trade Representative Ron Kirk

Questions regarding the US-PERU TPA

Including the Logging Annex within the United States-Peru Trade Promotion Agreement was a key factor that led me and many of my Democratic colleagues to support the agreement. Fully implementing this Annex and successfully addressing the illegal logging of mahogany and cedar remains a critical priority.

I understand that USTR and other agencies including the U.S. Forest Service and USAID worked to support the development of the forestry law and I applaud that work. In fact, with support from the U.S. Forest Service, Peru's regional governors

recently visited the U.S. and met with Governor Kitzhaber's forestry team, the Chief Forester for the Deschutes National Forest, and with the Warm Springs Tribe to gain technical expertise in the management of timber resources.

Although the Peruvian Congress passed an important milestone last summer when it passed a new forestry law implementing many of its Annex obligations, however, Peru has failed to promulgate regulations implementing the law, and is thus remains in breach of our agreement.

- Please provide me with a timeline for the completion of the drafting of the regulations implementing the new law. In particular, is it your estimate that Peru will meet the one-year deadline? As you know, the new law won't go into effect until the regulations are implemented.

Peru's enactment of the forestry law builds on other efforts to date made by Peru to fulfill its Annex commitments, such as creating a new Ministry of Environment, reforming and making independent its forestry oversight agency, and revising its criminal laws to strengthen penalties for environmental crimes.

- Can you describe how Peru is taking advantage of its new tools to combat illegal logging of mahogany and cedar? For instance, can you document any increase in the number of illegal logging prosecutions? Can you document any increase in the number of convictions for these crimes? Additionally, in your opinion, has the overall severity of the problem of illegal logging of mahogany and cedar diminished?

Thank you for your continued efforts to achieve the objectives of our agreement with Peru.

Trade in Solar Panels

I appreciate the USTR's efforts to ensure our trading partners play by the rules.

However, I hope to correct the record on Ambassador Kirk's comments with regard to the solar trade cases currently under investigation at the U.S. Department of Commerce. During our hearing, Ambassador Kirk stated that the U.S. enjoys a "huge" trade surplus in solar goods.

While that may have been the case in 2010, it is certainly no longer the case in 2011. According to federal trade statistics and illustrated in a recent report, *Losing the Environmental Goods Economy to China* (February 2012) issued by the office of Sen. Ron Wyden (D-Ore.), the U.S. went from a nearly \$2 billion trade surplus with the world in solar goods to a more than \$1.5 billion deficit in 2011.

It is important that your office note how quickly and dramatically our trade deficit can change when goods from China surge into the U.S. market. This surge caused

layoffs and plant closures across America; globally, China's actions in this industry are having negative impact as well.

Bloomberg News has reported on China's new five-year plan for its solar industry setting targets for increasing production capacity by its polysilicon and solar cell makers. This effort is part of China's plan to ensure that its state-owned or controlled enterprises survive the recent slump in global prices. The drop in prices itself, however, has been caused by China's massive subsidization of this sector, leading to the dumping of these products on the U.S. and other markets. China's plan to further expand production—found on their Ministry of Industry and Information Technology government website—will further drive out fair global competition.

Thank you for your continued efforts in this regard.

**Questions for the Record from Rep Schock
For Ambassador Kirk
Ways and Means Full Committee Hearing on President Obama's Trade Policy
Agenda with U.S. Trade Representative Ron Kirk**

- 1.) Ambassador Kirk, American trucks powered by motors engineered to meet U.S. EPA emissions standards accounted for over 95 percent of sales in the Colombian heavy-duty commercial vehicle market in 2011. Those truck sales generated over \$1 billion in U.S. exports. The Colombian Minister for the Environment recently announced that Colombia would soon amend its emissions regulations to require European standards for truck motors, which would put U.S. truck manufacturers at a severe disadvantage in the Colombian market. Passage of the U.S.-Colombia Trade Promotion Agreement set a promising path for deepening our bilateral trade ties, but this regulatory development is a step back in that regard. What is your office doing to ensure that American trucks engineered to American standards retain access to the Colombian market? What timeframe do you anticipate for resolution of this issue?
- 2.) Ambassador Kirk, I appreciate that USTR has made clear to Argentina the grave concern that Congress and the Administration share about the numerous trade policies in Argentina that call into question that country's willingness to live up to its own international commitments. Among the Argentine trade policies that violate its WTO commitments, let me give just two examples. First, Argentina now insists on non-automatic import licenses for all imports, with processing times that often extend far beyond allowable time periods. Numerous U.S. businesses and businesses from other countries are reporting being told informally that they will not be given licenses unless they agree to export or invest an amount equal to their imports into Argentina. Second, Argentina's 2011 reinsurance regulations impose draconian restrictions on U.S. reinsurance companies by prohibiting almost all cross-border reinsurance services, in direct contravention of Argentina's WTO commitments. I understand that USTR is also

considering a request from some quarters of the private sector to remove Argentina's benefits under the GSP preference program because of Argentina's refusal to pay self-enforcing judgments that international arbitration panels awarded to two U.S. businesses in the public utility sector because of Argentina's violation of those businesses' rights under our bilateral investment treaty. What prospects do you see for resolving these grave concerns with Argentine trade policy, so that it does not continue to undermine the international trading system?

- 3.) Ambassador Kirk, the Framework Document on the Global Fund to Fight AIDS, Tuberculosis and Malaria states that the Fund will support programs that are "consistent with international law and agreements, respect intellectual property rights (IPR), such as the Trade-Related Aspects of Intellectual Property (TRIPS) Agreement, and encourage efforts to make quality drugs and products at the lowest possible prices for those in need." This commitment is essential. I am concerned that we may not have adequate systems in place to ensure that Global Fund's drug procurement policies meet domestic law and global IP standards recognized by all WTO members. I support the procurement of affordable quality medicines and procurement rules that are consistent with strong IPR protection, which is key to encouraging continued investment and innovation that will provide new life-saving medicines.

Given that the United States remains the global leader in pharmaceutical innovation and the Global Fund's largest donor, how is the Administration monitoring the Global Fund's procurement policies to ensure that they are consistent with domestic laws, the "Guide to the Global Fund's Policies on Procurement and Supply Management", the TRIPS Agreement and the Doha Agreement on TRIPS and Public Health, and are you satisfied with the level of consistency? As the Global Fund transitions into new leadership, I ask that you work with your colleagues at the Department of State to ensure that their policies on procurement and supply management comply with these obligations. This has critical implications not only for our innovative pharmaceutical sector, which supports 4 million jobs in the US, but also for taxpayers and for all those who depend on the Global Fund for existing and future medicines.

